

13
CLERK'S COPY.

Vol. I

TRANSCRIPT OF RECORD

(Pages 1 to 380)

Supreme Court of the United States

OCTOBER TERM, 1945

No. 15

HARRY E. WHITE, PETITIONER,

vs.

**WM. F. STEER, COLONEL, INFANTRY, UNITED
STATES ARMY, PROVOST MARSHAL, CENTRAL
PACIFIC AREA**

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE NINTH CIRCUIT**

PETITION FOR CERTIORARI FILED DECEMBER 29, 1944.

CERTIORARI GRANTED FEBRUARY 12, 1945.

No. 10774

United States
Circuit Court of Appeals
For the Ninth Circuit.

WM. F. STEER, Colonel, Infantry, United States
Army, Provost Marshal, Central Pacific Area,
Appellant,

vs.

HARRY E. WHITE,

Appellee.

Transcript of Record
In Two Volumes
VOLUME I
Pages 1 to 380

Upon Appeal from the District Court of the United States
for the Territory of Hawaii



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS OF RECORD

For the Petitioner, Harry E. White,

FRED PATTERSON, Esquire,
McCandless Building, Honolulu, T. H.

E. J. BOTTS, Esquire,
Stangenwald Building, Honolulu, T. H.

For the Respondent, William F. Steer, Colonel,
Infantry, United States Army, Provost Marshal,
Central Pacific Area,

G. D. CROZIER, Esquire, United States Dis-
trict Attorney, District of Hawaii,
Federal Building, Honolulu, T. H.

EDWARD A. TOWSE, Esquire, Assistant
United States District Attorney, District of
Hawaii,
Federal Building, Honolulu, T. H.

EDWARD J. ENNIS, Esquire, Special As-
sistant to the Attorney General of the United
States,
Washington, D. C.

LIEUT. COL. WILLIAM J. HUGHES, JR.,
Judge Advocate General's Department,
Washington, D. C.

LIEUT. COL. EUGENE V. SLATTERY, Of-
fice of the Military Governor,
Honolulu, T. H. [1*]

*Page numbering appearing at foot of page of original certified
Transcript of Record.

In the United States District Court for the
Territory of **Hawaii**

Habeas Corpus No. 300

In the Matter of the Application of
HARRY E. WHITE

For a Writ of Habeas Corpus

CLERK'S STATEMENT

Time of Commencing Suit:

April 14, 1944

Petition filed

Names of Original Parties:

Harry E. White, Petitioner

**C. T. Stevenson, Warden of Oahu Prison, Re-
spondent**

Dates of Filing Pleadings:

April 14, 1944

Petition

April 15, 1944

Order to Show Cause issued

April 18, 1944

Stipulation

**Answer to Petition and Order to Show
Cause**

Traverse

Writ of Habeas Corpus issued

✓

April 20, 1944

Stipulation

Stipulation

Stipulation

Stipulation

April 21, 1944

Stipulation

Date of Filing Decision:

May 2, 1944

Decision filed [2]

Date of Filing Judgment:

May 4, 1944

Judgment filed

Proceedings in the above entitled matter were had before the Honorable J. Frank McLaughlin, District Judge.

Dates of Filing Appeal Documents:

May 3, 1944

Exceptions to Decision

May 4, 1944

Order on Taking Appeal

May 5, 1944

Notice of Appeal

May 5, 1944

Stipulation for Record

Certificate of Clerk As To The Above Statement
United States of America,
Territory of Hawaii—ss.

I, Wm. F. Thompson, Jr., Clerk of the United States District Court for the Territory of Hawaii, do hereby certify the foregoing to be a full, true and correct statement showing the time of commencement of the above entitled cause; the names of the original parties; the several dates when respective pleadings were filed; the date the decision was filed, the date the judgment was filed; the name of the judge presiding and the dates when appeal documents were filed in the above entitled cause.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 9th day of May, A. D. 1944.

[Seal]

WM. F. THOMPSON, JR.,

Clerk, U. S. District Court,
Territory of Hawaii. [3]

[Title of District Court and Cause.]

PETITION

To the District Court of the United States for the
Territory of Hawaii:

Comes now Harry E. White, petitioner above named, and respectfully shews as follows:

I.

That petitioner is a citizen of the United States and of the Territory of Hawaii and is now and

ever since the 25th day of August, 1942, has been and still is an inmate of the Oahu Prison, penitentiary of the Territory of Hawaii situate at Honolulu, in said Territory of Hawaii, within a distance of 20 miles from this Honorable Court;

II.

That at all times herein mentioned, C. T. Stevenson has been and still is the duly appointed, qualified and acting warden of said Oahu Prison, and as such has in his custody all prisoners imprisoned therein, including petitioner;

III.

That on August 20, 1942, and for a considerable time prior thereto, petitioner was engaged in Honolulu in the business of stockbroker and investment agent with a place of business in said Honolulu; that at no time herein mentioned was petitioner a member of, or connected with, the armed forces of the United States; [5]

IV.

That while engaged in said brokerage and investment business as a civilian as aforesaid, on Thursday, August 20, 1942, petitioner was arrested and held in the Honolulu jail until Saturday, August 22, when at approximately 2:00 o'clock in the afternoon of said day he was brought by armed members of the office of Provost Marshal in said Honolulu, before one Major Samuel E. Murrell, designated as judge of the Provost Court and conducting the business of said court in the courtroom of the district magistrate of Honolulu;

V.

That petitioner was informed he was to be tried before said Major Samuel E. Murrell on a charge of embezzlement growing out of the conduct of his said brokerage and investment business, to-wit, violation of Chapter 1881, Revised Laws of Hawaii, 1935; that petitioner was never furnished with a copy of the charge or accusation against him;

VI.

That promptly on being brought before the said Major Samuel E. Murrell, petitioner entered a written plea to the jurisdiction on the ground that the Provost Court had no jurisdiction over the subject of said charge or accusation or the person of petitioner, a copy of which said plea is attached hereto and made a part hereof, marked Exhibit "A";

VII.

That said plea to the jurisdiction was forthwith overruled by said Major Samuel E. Murrell, and petitioner thereupon filed and presented in said Provost Court a written demand for trial by jury, a copy of which is hereto attached and made a part hereof, marked Exhibit "B"; that said demand for a trial by jury was [6] forthwith denied by said Major Samuel E. Murrell;

VIII.

That upon denial of a trial by jury, petitioner filed a written motion supported by affidavits for a continuance to prepare his defense in said matter,

a copy of which said motion and affidavits is hereto attached and marked Exhibit "C"; that said motion was forthwith overruled and petitioner forced to trial on said August 25, 1942, and was convicted by said Major Samuel E. Murrell on said day and immediately sentenced to imprisonment for a term of five years and mittimus issued forthwith, and ever since said 25th day of August, 1942, petitioner has been and still is confined in Oahu Prison pursuant to the sentence of the judge of said Provost Court. A copy of said mittimus is hereto attached and marked Exhibit "D";

IX.

That the trial and conviction of petitioner before said Provost Court was in violation of petitioner's rights under the Constitution, to-wit, the 5th and 6th Amendments of the Constitution, and in violation of his rights under the laws of the United States and the Territory of Hawaii, and said Provost Court was without right or lawful authority to try petitioner and said proceedings were, and are, null and void, and petitioner's imprisonment in said Oahu Prison by the said C. T. Stevenson as warden, who is imprisoning him under color of authority of the United States of America, is wrongful and in violation of petitioner's rights;

X.

That said trial and hearing before the said Major Samuel E. Murrell was unfair and petitioner was given only a semblance of a trial in said Provost Court; [7]

XI.

That petitioner is detained in said Oahu Prison under the mittimus issued by said Provost Court and is not detained in said prison under process of any lawfully constituted court of the Territory of Hawaii or the United States of America, or held otherwise than hereinabove set forth;

XII.

Petitioner alleges that on December 7, 1941, the Governor of the Territory of Hawaii, acting under authority and pursuant to the provisions of Section 67 of the Organic Act (Title 48, Section 532, U. S. Code), by proclamation declared martial law throughout the Territory, a copy of which proclamation is annexed hereto and made a part hereof and marked Exhibit "E". But petitioner alleges that said martial law ceased to exist legally in the Territory prior to said August 25, 1942, when he was tried as aforesaid before said Provost Court;

XIII.

Petitioner alleges that on August 25, 1942, when he was tried as aforesaid, the courts of the Territory and the duly appointed judges thereof were able and ready to perform their normal functions and duties, and no such imminent danger of invasion by an enemy force existed as to warrant or justify the denial to petitioner of a trial and hearing before the proper courts in and of the Territory of Hawaii;

XIV.

Petitioner further alleges that no military necessity existed for the trial of petitioner, a civilian, before a military tribunal and there is and was no justification for the denial to petitioner of the rights guaranteed him under the Constitution, particularly, to-wit, the right to have the charge against him founded on a presentment or indictment of a grand jury, the right to a trial by jury, and the right to a reasonable opportunity to prepare his [8] defense and to secure the attendance of witnesses in his favor, all of which petitioner avers were denied him;

Wherefore, petitioner prays that a writ of habeas corpus issue directed to C. T. Stevenson, warden of Oahu Prison, commanding him to produce the body of the prisoner at a time and place to be specified, then and there to receive and do what this court shall order concerning the detention and restraint of petitioner, and that petitioner may be ordered discharged from the detention and imprisonment aforesaid.

Dated: Honolulu, Hawaii, March 31, 1944.

/s/ HARRY E. WHITE

Petitioner

Territory of Hawaii,
City and County of Honolulu—ss.

Harry E. White, being first duly sworn, on oath deposes and says: That he is the petitioner in the above entitled action; that he has read the foregoing petition, knows the contents thereof and that the same are true.

/s/ HARRY E. WHITE

Subscribed and sworn to before me this 31st day of March, A. D. 1944.

[Seal] /s/ WALTER L. JOAO

Notary Public, First Judicial Circuit, Territory of Hawaii.

My commission expires Sept. 29, 1945. [9]

EXHIBIT "A"

In the Provost Court of Honolulu, City and County
of Honolulu, Territory of Hawaii

TERRITORY OF HAWAII

vs.

HARRY E. WHITE,

Defendant.

PLEA

Comes now the defendant above named, Harry E. White, and respectfully enters this his plea to the jurisdiction of the above entitled court, and most respectfully sets forth that this court has no jurisdiction over the subject of this action or the person of this defendant.

Dated: Honolulu, T. H., August 24, 1942.

HARRY E. WHITE (sgd)

Defendant

FRED PATTERSON

Attorney for Defendant [10]

EXHIBIT "B"

[Title of Provost Court and Cause.]

DEMAND FOR JURY TRIAL

Comes now Harry E. White, defendant in the above entitled cause, and most respectfully enters this his written demand for a jury trial and respectfully requests and demands that this case be tried by a jury of the country, within the meaning of the provisions of the Constitution of the United States and the Amendments thereto.

Dated: Honolulu, T. H., August 24, 1942.

HARRY E. WHITE (sgd)

Defendant

FRED PATTERSON

Attorney for Defendant [11]

EXHIBIT "C"

[Title of Provost Court and Cause.]

MOTION

Comes now the defendant Harry E. White and, without waiving his rights in the matter of the plea to the jurisdiction and his demand for a jury trial herein, further moves this court that this case be continued for the purpose of trial upon the

ground that he has not had sufficient time within which to adequately prepare his defense in this case or to properly advise with counsel, and upon the further ground that counsel of his own choice in this case is presently suffering from an ailment which requires a daily visit to his physician.

Dated: Honolulu, T. H., August 24, 1942.

HARRY E. WHITE (Sgd)

Defendant. [12]

[Title of Provost Court and Cause.]

AFFIDAVIT

Territory of Hawaii;

City and County of Honolulu—ss.

Fred Patterson, being first duly sworn on oath deposes and says: that he is the attorney of record for the above named defendant Harry E. White; that the charges in this case were filed on Saturday, the 22nd day of August, 1942, and they involve the dealings of a stockbroker with his client, and the matters contained in said charge are kept by book entries from day to day in the business of the defendant. Further, your affiant has been informed by the police that they are investigating certain other transactions involving the defendant in his business as a stockbroker in the City and County of Honolulu, Territory of Hawaii. That your affiant has practised law in the Territory of Hawaii for more than twenty years and has actively engaged

in the practice of law in the Federal Courts and the Territorial Courts and in military tribunals and that in his experience before Naval Courts, United States Courts and Territorial Courts he has never been obliged to go to trial within the short space of time which has been allowed him in this particular case; and he verily believes and says that this defendant cannot safely go to trial without a more thorough and exhaustive study of the facts surrounding the alleged offense, and the alleged crime is so peculiar in its nature and is so involved by reason of the bookkeeping and records of the defendant that he feels that the defendant should [13] be allowed further time within which to prepare for his defense in this case. Your affiant says that at the present time he is not in a position to properly advise his client on the merits of this particular case.

Further, your affiant has caused to be filed in this court a plea to the jurisdiction and a demand for a jury trial, and your affiant is at a complete loss at the present time, without further study, to definitely advise his client as to whether or not immediate proceedings should be taken in other courts to test the validity and authority of any proposed trial of the facts in this case before the above entitled court.

Further, your affiant says that he has been visiting the doctor every day for the past ten days on account of an injury which he received to his arm.

FRED PATTERSON (sgd)

Subscribed and sworn to before me this 25th day of August, 1942.

[Seal] HATTIE PANG LEE (s)

Notary Public, First Judicial Circuit, Territory of Hawaii.

My commission expires June 30, 1945. [14]

[Title of Provost Court and Cause.]

AFFIDAVIT

Territory of Hawaii,

City and County of Honolulu—ss.

Harry E. White, being first duly sworn on oath deposes and says: that he is the defendant in the above entitled cause; that he was arrested on Thursday, the 20th day of August, 1942, at approximately 5 o'clock p.m. and was removed to the police station and held in jail until Saturday afternoon, the 22nd day of August, 1942, at approximately 2 o'clock p.m. That he has been unable in the short time since he has been released from custody to properly and adequately confer with counsel to the extent that he desires to do so, and he has been advised by his counsel that in his opinion he cannot safely go to trial at the present time without a further study of the nature and cause of the action which has been lodged against him in the above entitled court.

HARRY E. WHITE (sgd)

Subscribed and sworn to before me this 25 day
of August, 1942.

[Seal] HATTIE PANG LEE /s/
Notary Public, First Judicial Circuit, Territory of
Hawaii.—

My commission expires June 30, 1945. [15]

EXHIBIT "D"

Copy

Case No. 3594

No. 1942-3445

MITTIMUS

Provost Court

Meeting at Honolulu in the City and County of
Honolulu

Territory of Hawaii

In the Matter of

HARRY E. WHITE

a person charged with the commission of Violation
of Sec. 5840 Revised Laws of Hawaii, '35

(Embezzlement)

ORDER

Major S. E. Murrell, JAGD, Judge of the Provost
Court:

To the Provost Marshal:

Harry E. White, having been duly charged and
convicted in the Provost Court meeting at Honolulu

in the City and County of Honolulu, Territory of Hawaii, on the 25th day of August, 1942, of the offense of a true copy of which is as follows: (Set forth charge in full.)

That Harry E. White at Honolulu, City and County of Honolulu, Territory of Hawaii, on the 4th day of June A. D. 1942, being then and there intrusted with and by the consent and authority of the owner thereof, having the possession, control, custody and keeping of a certain thing of value, to wit: 500 shares of Aircraft Accessories stock, 100 shares of Vultee Aircraft stock, and 100 shares of White Motor stock, of the total value of \$3,239.64, the property of Miss Louise Rickson, the owner thereof and entitled thereto did without the consent and against the will of the said Miss Louise Rickson, fraudulently convert and dispose of the same to his own use and benefit and did then and there and thereby commit the offense of embezzlement, contrary to Section 5840 of the Revised Laws of Hawaii, 1935 and by said Court on this day duly sentenced to be imprisoned at hard labor for a term of Five Years (5 Years), ~~and to pay a fine of~~ ~~Dollars~~, or to be imprisoned at hard labor until such fine be paid,

You Are Hereby Ordered to take said Harry E. White into your custody and deliver him to the Warden of Oahu Prison. Hereof Fail Not.

MAJOR S. E. MURRELL, JAGD

Judge of the Provost Court:

To the Warden of Oahu Prison:

Harry E. White having been duly convicted and sentenced in the manner and form aforesaid,

You Are Hereby Ordered to receive the said Harry E. White at Oahu Prison from the Provost Marshal and safely keep and confine the said Harry E. White in the said Oahu Prison and cause the said sentence to be fully executed.

Hereof Fail Not.

Aug. 25, 1942:—Admitted to Oahu Prison

Ser. No. M-281 FP No. 5852

By Order of the Military Governor.

(Sgd) (By) S. E. MURRELL.

Judge of the Provost Court meeting at Honolulu,
in the City and County of Honolulu, Territory
of Hawaii. [16]

EXHIBIT "E"

Territory of Hawaii

A Proclamation

Whereas, it is provided by Section 67 of the Organic Act of the Territory of Hawaii, approved April 30, 1900, that, whenever it becomes necessary, the Governor of that territory may call upon the commander of the military forces of the United States in that territory to prevent invasion; and

Whereas, it is further provided by the said section that the governor may in case of invasion or imminent danger thereof, when the public safety requires it, suspend the privilege of the writ of habeas

corpus and place the territory under martial law; and

Whereas, the armed forces of the Empire of Japan have this day attacked and invaded the shores of the Hawaiian Islands; and

Whereas, it has become necessary to repel such attack and invasion; and

Whereas, the public safety requires;

Now, Therefore, I, J. B. Poindexter, Governor of the Territory of Hawaii, do hereby announce that, pursuant to said section, I have called upon the Commanding General, Hawaiian Department, to prevent such invasion;

And, pursuant to the same section, I do hereby suspend the privilege of the writ of habeas corpus until further notice;

And, pursuant to the same section, I do hereby place the said territory under martial law;

And, I do hereby authorize and request the Commanding General, Hawaiian Department, during the present [17] emergency and until the danger of invasion is removed, to exercise all the powers normally exercised by me as Governor;

And I do further authorize and request the said Commanding General, Hawaiian Department, and those subordinate military personnel to whom he may delegate such authority, during the present emergency and until the danger of invasion is removed, to exercise the powers normally exercised by judicial officers and employees of this territory and of the counties and cities therein, and such other and further powers as the emergency may require;

And I do require all good citizens of the United States and all other persons within the Territory of Hawaii to obey promptly and fully, in letter and in spirit, such proclamations, rules, regulations and orders, as the Commanding General, Hawaiian Department, or his subordinates, may issue during the present emergency.

In Witness Whereof, I have hereunto set my hand and caused the seal of the Territory of Hawaii to be affixed.

Done at Honolulu, Territory of Hawaii, this 7th day of December, 1941.

[Seal] (s) J. B. POINDEXTER

Governor of the Territory of
Hawaii.

By the Governor:

CHAS. M. HITE

Secretary of Hawaii.

A true and correct copy:

/s/ JAMES F. HANLEY

James F. Hanley,

Major, J.A.G.D.

3:30 P.M.

NOTICE

To G. D. Crozier, United States Attorney:

Please take notice that the foregoing application of Harry E. White for a writ of habeas corpus will be heard before the Honorable J. Frank McLaugh-

lin, United States District Judge in his courtroom
at 9 o'clock A.M. on April 15, 1944.

FRED PATTERSON and

E. J. BOTTS,

Attorneys for Petitioner

Per S/M.M.

[Endorsed]: Filed April 14, 1944. [18]

**In the District Court of the United States in and for
the District and Territory of Hawaii**

No. 300

**In the Matter of the Application
of**

HARRY E. WHITE,

for a writ of habeas corpus

ORDER TO SHOW CAUSE

To C. T. Stevenson, Warden, Oahu Prison, Honolulu, City and County of Honolulu, Territory of Hawaii:

The petition of Harry E. White having been duly filed herein praying that a writ of habeas corpus issue in the above entitled matter,

It Is Hereby Ordered that you, C. T. Stevenson, warden of Oahu Prison, in said Honolulu, Territory of Hawaii, be and appear before the undersigned judge of the above entitled court on the 20th day of April, 1944, at the hour of 10:00 o'clock in the fore-

noon of said day to show cause, if any you have, why said writ should ~~not~~ issue.

The United States Marshal is hereby ordered and directed to forthwith serve a copy of this Order upon said C. T. Stevenson, Warden of Oahu Prison, in Honolulu, Territory of Hawaii, together with a copy of the petition aforesaid.

Dated: Honolulu, T. H., April 15, 1944.

/s/ J. FRANK McLAUGHLIN

Judge of the Above Entitled
Court [20]

Office of the United States Marshal
District of Hawaii

No. 300

In the Matter of the Application
of

HARRY E. WHITE,

for a writ of habeas corpus

UNITED STATES MARSHAL'S RETURN

Received the within Order to Show Cause this 15th day of April, A.D. 1944, and the same is returned duly executed this 15th day of April, A.D. 1944, by exhibiting the original Order to Show Cause to C. T. Stevenson, Warden of Oahu Prison, and by handing to and leaving with him a certified copy of the Order to Show Cause at the Sacred

Hearts Hospital, Bates & Nuuanu Streets, Honolulu,
T.H. at 12:40 p.m.

Dated at Honolulu, T.H. this 15th day of April,
A.D. 1944.

OTTO F. HEINE,

U. S. Marshal, District of
Hawaii

By (s) EMMANUEL U. MOSES, JR.

Deputy.

Marshal's Civil Docket 7-418

No. 2463

Court No. H.C. 300

Fees \$2.18

Expenses

Total 2.18

[Endorsed]: Filed April 15, 1944. [21]

[Title of District Court and Cause.]

STIPULATION

It is hereby stipulated by and between counsel herein as follows:

1. That Wm. F. Steer, Colonel, Infantry, United States Army, Provost Marshal, Central Pacific Area, has been and is the duly appointed, qualified and acting custodian of petitioner.

2. That the said Wm. F. Steer, Colonel, United States Army, be and he is hereby substituted as Respondent in the present cause in the place of C. T. Stevenson, Warden of Oahu Prison.

3. That Paragraph II of the Petition herein be amended to read as follows:

"That at all times herein mentioned Wm. F. Steer, Colonel, Infantry, United States Army, Provost Marshal, Central Pacific Area, has been and still is the duly appointed, qualified and acting custodian of Petitioner."

4. That the last four lines of Paragraph IX of the Petition, be stricken out and the following substituted therefor:

"—petitioner's imprisonment in said Oahu Prison by the said Wm. F. Steer, Colonel, United States Army, who is imprisoning him under color of authority of the United States of America is wrongful and in violation of petitioner's rights."

5. That the prayer of said Petition shall read as follows:

"Wherefore, petitioner prays that a writ of habeas corpus issue directed to Wm. F. Steer, Colonel, United States Army, Provost Marshal, Central Pacific Area, commanding him to [23] produce the body of the petitioner at a time and place to be specified, then and there to receive and do what this court shall order concerning the detention and restraint of petitioner, and that petitioner may be ordered discharged from the detention and imprisonment aforesaid."

Wm. F. Steer vs.

Dated this 18th day of April, 1944, Honolulu, T.H.

FRED PATTERSON

By (s) **E. J. BOTTS**

(s) **E. J. BOTTS**

Attorneys for Petitioner

(s) **C. Nils Tavares**

Attorneys for Petitioner

of Hawaii,

Attorney for C. T. Stevenson

(s) **G. D. CROZIER**

United States Attorney

District of Hawaii

(s) **EDWARD J. ENNIS**

Assistant to the Attorney

General/

Attorneys for Wm. F. Steer,
Col.

It is so ordered.

Dated this 18th day of April, 1944, Honolulu, T.H.

J. FRANK McLAUGHLIN

Judge of the above entitled
Court.

[Endorsed]: Filed April 18, 1944. [24]

[Title of District Court and Cause.]

ANSWER TO PETITION AND ORDER TO
SHOW CAUSE

To the Honorable J. Frank McLaughlin, Judge of
the United States District Court In and For the
Territory of Hawaii:

Comes now William F. Steer, Colonel, Infantry,
Provost Marshal, United States Army Forces, Central
Pacific Area, respondent herein, and for answer
to the petition and order to show cause respectfully
shows:

1

Respondent admits the allegations of Paragraph I.

2

Respondent admits the allegations of Paragraph II.

3

Respondent admits the allegations of Paragraph III.

4

Respondent admits the allegations of Paragraph IV but avers that at the time of his arrest petitioner was advised of the nature and cause of the accusation against him.

5

Respondent admits the allegations of Paragraph V but avers that in lieu of furnishing petitioner with a copy of the charge or accusation against him petitioner was orally advised of the nature and cause of said accusation. [25]

6

Respondent admits the allegations of Paragraph VI.

7

Respondent admits the allegations of Paragraph VII.

8

Respondent admits the allegations of Paragraph VIII.

9

Respondent denies the allegations of Paragraph IX.

10

Respondent denies the allegations of Paragraph X.

11

Respondent admits that petitioner is detained in Oahu Prison under a mittimus issued by the Provost Court. (Petitioner's Exhibit D) The remaining allegations of this paragraph are denied.

12

Respondent admits that the Governor of the Territory of December 7, 1941, acting pursuant to the provisions of Section 67 of the Organic Act by

a proclamation declared martial law throughout the Territory. (Petitioner's Exhibit E) Respondent denies that martial law ceased to exist legally in the Territory prior to August 25, 1942.

13

Respondent has no knowledge as to whether on August 25, 1942, the date of petitioner's trial, the courts of the Territory and the judges were able and ready to perform their normal [26] functions and duties. Respondent denies that no such imminent danger of invasion by an enemy force existed on that date as to warrant or justify the denial to petitioner of a trial and hearing before the courts of the said Territory.

14

Respondent denies that no military necessity existed for the trial of petitioner before a military tribunal, that petitioner was deprived of any rights guaranteed to him under the Constitution, that he had any right to have the charge against him founded on a presentment or indictment of a grand jury, that he had any right to a trial by jury, and avers that he was accorded a reasonable opportunity to prepare his defense and to secure the attendance of witnesses in his favor.

Further Answering respondent shows:

15

That on December 7, 1941, the then Governor of the Territory, acting under Section 67 of the Organic Act, issued the proclamation attached to the

petition as Exhibit E; that under the provisions of said Organic Act the President of the United States, in response to a communication from the said Governor and acting under Section 67 of the Organic Act, on December 9, 1941, advised the said Governor in response to his telegram of December 7, 1941, that his action in suspending the writ of habeas corpus and placing the Territory under martial law in accordance with Section 67 of the Organic Act (48 U.S.C. 532) had his approval. The action of the then Governor in declaring martial law and suspending the [27] privilege of the writ of habeas corpus has never been revoked nor has the action of the President in approving these actions by the Governor been revoked. Respondent avers the privilege of the writ of habeas corpus is by the said action of the Governor and of the President, and by reason of Paragraph 1.01, General Orders No. 2, Office of the Military Governor, 10 March 1943, suspended and this court has no jurisdiction to grant the relief sought by petitioner.

16

On December 7, 1941, the Governor of the Territory called upon The Commanding General of the Hawaiian Department, Lieutenant General Walter C. Short, to prevent invasion and to exercise certain other powers, functions, and duties. There is attached hereto and made a part hereof as respondent's Exhibit A proclamation pursuant thereto made by The Commanding General, Hawaiian Department, dated 7 December 1941.

17

On December 17, 1941, Lieutenant General Walter C. Short, Commanding General of the Hawaiian Department, relinquished command and was succeeded on the same date by Lieutenant General Delos C. Emmons as Commanding General of the Hawaiian Department, who occupied that position August 25, 1942.

18

Each of the above-named officers exercised his powers, functions, and duties under the proclamation of the Governor of Hawaii dated December 7, 1941, (Petitioner's Exhibit E) under the name and style of Military Governor of the Territory of Hawaii. [28]

19

The proclamation of the Governor of Hawaii dated December 7, 1941, provided as follows:

"And I do further authorize and request the said Commanding General, Hawaiian Department, and those subordinate military personnel to whom he may delegate such authority, during the present emergency and until the danger of invasion is removed, to exercise the powers normally exercised by judicial officers and employees of this territory and of the counties and cities therein, and such other and further powers as the emergency may require;"

That pursuant thereto The Commanding General, acting under the name and style of Military Governor on December 7, 1941, promulgated General Or-

ders No. 4 vesting in Provost Courts power to try offenses which constituted violations of the laws of the Territory of Hawaii.

20

By General Orders No. 122, dated 1 July 1942, Major Samuel E. Murrell was appointed Provost Court and in that capacity acted as Provost Court in the trial, sentencing, and commitment of petitioner described by the petition herein.

21

That on December 7, 1941, the Territory of Hawaii was invaded and was in imminent danger of invasion within the meaning of Section 67 of the Organic Act and that the public safety required the declaration of martial law and the suspension of the privilege of the writ of habeas corpus; that at the time of the commission of the offense on or about June 4, 1942, and the arrest and trial of petitioner, August 20 through August 25, 1942, the Territory of Hawaii had recently been invaded and was still in imminent danger thereof, and that the public safety required the continuation of [29] the state of martial law and that martial law still continued in existence at that time and the privilege of the writ of habeas corpus remained suspended.

22

That from December 7, 1941, up to the present time the Territory of Hawaii was and now is a theater of operations, part of a combat zone, in an active theater of war.

23

That by reason of the aforesaid, the said Provost Court, Major Samuel E. Murrell, had jurisdiction of the person of petitioner and the accusation against him, and that the sentence adjudged was within the limit of punishment permissible under General Orders No. 4, December 7, 1941, aforesaid. That this court is without jurisdiction to inquire into the conduct of the said trial by the said Provost Court, Major Samuel E. Murrell, and is without power to determine whether said Provost Court should or should not have granted a continuance to petitioner. That under the provisions of General Orders No. 4, December 7, 1941, aforesaid, and applicable law, there is no right on the part of petitioner to have a charge triable by a Provost Court founded upon a presentment or indictment of a grand jury, nor does petitioner possess in such case the right to a trial by a jury, as alleged in Paragraph IV of his petition. Respondent shows that petitioner was represented by counsel of his own choice at said trial.

24

That under conditions existing from December 7, 1941, up to and including August 20 through August 25, 1942, military [30] necessity required the trial of civilians, including petitioner, by Provost Court, under the provisions of General Orders No. 4, December 7, 1941, and that such courts were established by The Commanding General of the Hawaiian Department, acting in the name and style of Military Governor, in good faith and in the

honest belief that in his military judgment, military necessity required their existence and operation. Respondent shows that the offense for which petitioner was tried is not an offense cognizable in the District Court of the United States for the District of Hawaii; that in respect of the prosecution of the said offense by the Territorial courts, the then Governor of the Territory by his proclamation dated December 7, 1941, quoted in Paragraph 19 of the present answer, requested during the present emergency and until the danger of invasion is removed, that The Commanding General, Hawaiian Department, and his subordinates exercise the powers normally exercised by judicial officers and employees of this Territory; that pursuant thereto the Territorial courts ceased to exercise their jurisdiction except as and when authorized so to do by The Commanding General, Hawaiian Department, acting in the name and style of Military Governor; that in respect of criminal cases no recession of the power to try criminal cases was made to the Territorial courts up to and including the date of trial and sentence of petitioner. •

25

Respondent avers that the Provost Court which tried and sentenced petitioner had jurisdiction of the person and the offense and the sentence herein was within the power of the court to adjudge and that petitioner is now legally held by the respondent under the mittimus herein. [31]

Whereupon respondent moves that the rule herein be discharged and the petition dismissed.

Dated at Honolulu, T. H., this day of April, 1944.

(s) WILLIAM F. STEER

Colonel, Infantry,
Provost Marshal,
United States Army Forces,
Central Pacific Area,
Respondent

(s) G. D. CROZIER

United States Attorney
District of Hawaii

(s) EDWARD J. ENNIS

Special Assistant to the At-
torney General

(s) EDWARD TOWSE

Assistant United States At-
torney District of Hawaii
Attorneys for Respondent

(s) WM. J. HUGHES, JR.

Lieut. Colonel, J.A.G.D.

(s) EUGENE V. SLATTERY

Lieut. Colonel, J.A.G.D.
Of Counsel

[Endorsed]: Filed Apr. 18, 1944. [32]

Territory of Hawaii

City and County of Honolulu—ss.

William F. Steer, Colonel, Infantry, being duly sworn on oath deposes and says:

That he is the Provost Marshal, United States Army Forces, Central Pacific Area, and in that capacity made and signed the foregoing answer to Petition and Order to Show Cause; that he has read the same, knows the contents thereof, and that all allegations of fact therein are true excepting such as are made upon information and belief and as to those, he believes them to be true to the best of his information, knowledge and belief.

(s) WILLIAM F. STEER

Colonel, Infantry,
Provost Marshal,
United States Army Forces,
Central Pacific Area,
Respondent

Subscribed and sworn to before me this 18th day of April, 1944.

[Seal] (s) N. F. JOHNSON

Notary Public, First Judicial Circuit, Territory of Hawaii

My commission expires November 28, 1946

N. F. J. [33]

EXHIBIT A

Proclamation

United States Army

Headquarters Hawaiian Department

Fort Shafter, 7 December 1941

To the People of Hawaii:

The military and naval forces of the Empire of Japan have attacked and attempted to invade these islands.

Pursuant to section 67 of the Organic Act of the Territory of Hawaii, approved April 30, 1900, the Governor of Hawaii has called upon me, as commander of the military forces of the United States in Hawaii, to prevent such invasion; has suspended the privilege of the writ of habeas corpus; has placed the Territory under martial law; has authorized and requested me and my subordinates to exercise the powers normally exercised by the governor and by subordinate civil officers; and has required all persons within the Territory to obey such proclamations, orders, and regulations as I may issue during the present emergency.

I announce to the people of Hawaii, that, in compliance with the above requests of the Governor of Hawaii, I have this day assumed the position of military governor of Hawaii, and have taken charge of the government of the Territory, of the preservation of order therein, and of putting these islands in a proper state of defense.

All persons within the Territory of Hawaii,

whether residents thereof or not, whether citizens of the United States or not, of no matter what race or nationality, are warned that by reason of their presence here they owe during their stay at least a temporary duty of obedience to the United States, and that they are bound to refrain from giving, by word or deed, any aid or comfort to the enemies of the United States. Any violation of this duty is treason, and will be punished by the severest penalties.

The troops under my command, in putting down any disorder or rebellion and in preventing any aid to the invader, will act with such firmness and vigor and will use such arms as the accomplishment of their task may require.

The imminence of attack by the enemy and the possibility of invasion make necessary a stricter control of your actions than would be necessary or proper at other times. I shall therefore shortly publish ordinances governing the conduct of the people of the Territory with respect to the showing of lights, circulation, meetings, censorship, possession of arms, ammunition, and explosives, the sale of intoxicating liquors and other subjects.

In order to assist in repelling the threatened invasion of our island home, good citizens will cheerfully obey this proclamation and the ordinances to be published; others will be required to do so. Offenders [34] will be severely punished by military tribunals or will be held in custody until such time as the civil courts are able to function.

Pending further instructions from this headquarters the Hawaii Defense Act and the Proclamation of the Governor of Hawaii heretofore is-

sued thereunder shall continue in full force and effect.

(Signed) WALTER C. SHORT,
Lieutenant General, U. S.
Army, Commanding.
Military Governor of Hawaii.

A True Copy:

JAMES F. HANLEY,
Major, J.A.G.D.

[Title of District Court and Cause.]

TRAVERSE

Come now Harry E. White, petitioner herein, and for Traverse to the return to the order to show cause issued in the above entitled matter, admits, shows and denies as follows:

I.

Petitioner, by reference, makes Paragraph I to XIV, inclusive, of his petition, with exhibits, a part of this traverse as fully as if the same were set out in words and figures;

II.

In answer to Paragraph 15, petitioner admits the first sentence or part of said paragraph; but denies the averment of said paragraph that this court has no jurisdiction to grant the relief prayed for, and denies that martial law remains in force here; admits that no formal proclamation revok-

ing the proclamation of December 7, 1941, was made by the Governor prior to August 25, 1942, but in this connection alleges that martial law legally expired in the Territory of Hawaii on a date substantially prior to said August 25, 1942, and the privilege of the writ of habeas corpus was fully restored as a matter of law prior to said August 25, 1942, and said privilege still continues in favor of all civilians in the Territory unlawfully deprived of their liberty. Petitioner therefore denies the last sentence of said Paragraph 15;

[36]

III.

Petitioner admits the averments of Paragraph 16;

IV.

Petitioner admits the averments of Paragraph 17;

V.

Petitioner admits the allegation in Paragraph 18 that the commanding officers referred to in Paragraph 17 assumed the title of Military Governor, but petitioner alleges that such office and title was assumed without lawful right or authority;

VI.

Admits the first paragraph of Paragraph 19, but has not sufficient knowledge to admit the second paragraph thereof and leaves respondent to his proof;

VII.

Admits the allegation of Paragraph 20;

VIII.

Petitioner denies the Territory was invaded on December 7, 1941, but admits that on said December 7, 1941, the Territory was in imminent danger of invasion within the meaning of Section 67 of the Organic Act; but petitioner denies the other averments of said paragraph, and further answering said paragraph, petitioner avers that long prior to August 25, 1942, the Territory was secure against invasion; that business was being conducted in the Territory normally, that the courts and judges thereof were ready and willing to perform their assigned functions, and that no justifiable reason existed for the continuance of martial law in the Territory or the denial of the privilege of the writ of habeas corpus; petitioner denies that martial law still continues legally in the Territory and denies that the privilege of the writ of habeas corpus remains suspended; [37]

IX.

Petitioner has not sufficient knowledge to admit or deny the averment of Paragraph 22 and leaves respondent to his proof;

X.

Petitioner denies the averments of Paragraph 23;

XI.

Petitioner denies the averments of Paragraph 24, insofar as the same alleges that military necessity required the trial of civilians, including peti-

tioner, before Provost Courts. Petitioner denies that said Provost Courts had right or authority to try any civilians, but irrespective of whether they had right to try any civilians, petitioner avers they had no right to try him for an indictable offense against the laws of the Territory, to-wit, embezzlement, the same being a crime involving moral turpitude. And further answering said paragraph, petitioner alleges that the proclamation of December 7, 1941, was for the immediate emergency, and that such emergency ceased to exist long prior to August 25, 1942, and as a matter of law the military tribunal had no jurisdiction to try, adjudge, convict and imprison petitioner for violation of a territorial law which was not remotely related to the military welfare or safety of the Territory:

XII.

In answer to Paragraph 25, petitioner denies that said Provost Court which tried and sentenced petitioner had jurisdiction either over the person of petitioner or the offense for which he was charged, [38] and petitioner alleges he is now illegally held and confined.

Wherefore, petitioner prays that a writ of habeas corpus may be issued herein and that the same may be made final and absolute, and that petitioner may be discharged from custody and go hence without day.

(s) HARRY E. WHITE

Petitioner

Territory of Hawaii
City and County of Honolulu—ss.

Harry E. White, being first duly sworn, on oath deposes and says: that he is the petitioner above named; that he has read the foregoing Traverse, knows the contents thereof, and that the same are true to the best of his knowledge, information and belief.

(s) HARRY E. WHITE

Subscribed and sworn to before me this 18th day of April, A. D. 1944.

(s) THOS. P. CUMMINS

Deputy Clerk, United States
District Court, Territory of
Hawaii.

[Endorsed]: Filed April 18, 1944. [39]

[Title of District Court and Cause.]

WRIT OF HABEAS CORPUS

The President of the United States of America.

To: Wm. F. Steer, Colonel, Infantry, United States Army, Provost Marshal, Central Pacific Area, Custodian of Petitioner:

We command you that the body of Harry E. White by you detained and imprisoned, as is charged, you have before the District Court of the United States in and for the District of Hawaii, on the 18th day of April 1944, at the hour of 3:15 o'clock in the afternoon of said day, together with

the cause of the detention of the said Harry E. White, to then and there undergo and receive in this behalf, and have you then and there this writ with your doings thereon, and you, Otto Heine, Esquire, United State Marshal in and for the District of Hawaii, or your deputy, are hereby directed and commanded to forthwith serve this writ.

Witness the Honorable J. Frank McLaughlin, Judge of the United States District Court in and for the District of Hawaii this 18th day of April, A. D., 1944.

[Seal] (s) WM. F. THOMPSON, JR.

Clerk, United States District Court in and for the District of Hawaii

Lét the foregoing writ of Habeas Corpus issue.

(s) J. FRANK McLAUGHLIN

Judge, United States District Court, in and for the District of Hawaii [41]

United States Marshal's Office
Marshal's Return

Upon issnance of the writ of habeas corpus herein on April 18, 1944, counsel for respondent, Colonel Wm. F. Steer accepted service of the writ for the respondent and forthwith produced the petitioner at the hearing of the proceedings in Judge J. Frank McLaughlin's Chambers and stipulated on the record that service on respondent's counsel be deemed to be service on the respondent personally and thereafter, on April 19, 1944, at 9:55

a. m. a certified copy of the writ was served personally on the respondent, Colonel Wm. F. Steer.

(s) OTTO F. HEINE

United States Marshal, District of Hawaii

Dated at Honolulu, T. H., this 19th day of April, A. D., 1944.

[Endorsed]: Filed Apr 19 1944 [42]

[Title of District Court and Cause.]

STIPULATION

It Is Hereby Stipulated by and between Counsel for Petitioner and Counsel for Respondent that the following documents submitted in evidence in the case of ex parte Lloyd C. Duncan, Habeas Corpus No. 298, U.S.D.C. for the Territory of Hawaii, may be received in evidence without objection:

Petitioner's Exhibit "A", "Admiral Halsey's Views," quoted in Army and Navy Register (Pet. Exhibit "B", Duncan Case);

Petitioner's Exhibit "B", Excerpt from Article by General Henry H. Arnold, Commanding General, Army Air Forces, quoted in Army and Navy Register (Petitioner's Exhibit "C", Duncan case);

Petitioner's Exhibit "C", "Americans of Japanese Descent," Army and Navy Register (Petitioner's Exhibit "D", Duncan Case);

Petitioner's Exhibit "D", "Ready for Jap Fleet" statement by Admiral Halsey, Army and Navy Journal (Petitioner's Exhibit "F", Duncan Case);

Petitioner's Exhibit "E", "Marshall Islands Campaign," Statement by Major General Willis H. Hale, Commanding General, 7th Air Force, Army and Navy Register, March 4, 1944 (Petitioner's Exhibit "G", Duncan Case).

It Is Hereby Stipulated that testimony adduced at the trial of Lloyd C. Duncan, Habeas Corpus No. 298, in this Court by witnesses Albert M. Cristy, Judge of the First Circuit Court, Territory of Hawaii, Judge Harry Steiner, Judge of the Municipal Court, Territory of Hawaii, Gus Sproat, Clerk of the Supreme Court of Hawaii may be received in evidence without objection.

It Is Stipulated that the following exhibits submitted in evidence in the trial of Lloyd C. Duncan, Habeas Corpus No. 298, this Court, be received in evidence without objection:

.. Petitioner's Exhibit "F" Statistics as to business of Supreme Court and Circuit Courts, years 1939 to 1943 inclusive (Petitioner's Exhibit "H", Duncan Case); [44]

Petitioner's Exhibit "G-1", "G-2", "G-3", Correspondence with Mr. Charles F. Loomis by Galon N. Fisher, W. A. Gabrielson, Chief of Police, and Col. Kendall G. Fielder, Assistant Chief of Staff, G-2 Hawaiian Department (Petitioner's Exhibit "J-1", "J-2", "J-3", Duncan Case);

Petitioner's Exhibit "H", letter dated April 4, 1944 from Ralph C. Scott, Vice President and Manager, Bishop Insurance Agency, Ltd., giving War Risk Insurance rates, October 5, 1941 to December 31, 1943, inclusive (Petitioner's Exhibit "K", Duncan Case);

Petitioner's Exhibit "I", Comparative Statement of Gross Income and Consumption Tax Collections, etc., Territory of Hawaii, 1941 to 1943 (Petitioner's Exhibit "L", Duncan Case);

Petitioner's Exhibit "J-1", to "J-6", inclusive, newspaper clippings containing statements by General Emmons, General Richardson, Admiral Nimitz, Secretary of Navy Knox (Petitioner's Exhibit "N-1 to "N-6", inclusive, Duncan case);

Petitioner's Exhibit "K", copy of Petition to Secretary of State signed by American Citizens of Japanese Ancestry (Petitioner's Exhibit "Q", Duncan Case);

Petitioner's Exhibit "L", Copy of General Orders No. 31, 25 August 1943 (Petitioner's Exhibit "R", Duncan Case);

Petitioner's Exhibit "M", pamphlet "The Volunteer" (Petitioner's Exhibit "S", Duncan Case);

Petitioner's Exhibit "N-1" to "N-4", inclusive, Newspaper clippings of statements by Admiral Nimitz, General Emmons, and others (Petitioner's Exhibit "T-1" to "T-4", Duncan Case);

Petitioner's Exhibit "O", Memorandum for Colonel Morrison giving data as to Japanese in the United States Army, casualties thereof, number of Japanese evacuated from Hawaii, December 7, 1941 to April 10, 1944, number interned for same period, number interned during first quarter of 1944, and total number of internment cases, with other data (Petitioner's Exhibit "U", Duncan Case);

It Is Stipulated that the Court may take judicial notice of the Hawaii Defense Act, and of Rules 1 to 98 prescribed pursuant thereto.

It Is Stipulated that the testimony of Honorable Ingram M. Stainback, Governor of Hawaii, submitted in ex parte Duncan, Habeas Corpus No. 298, this Court, may be received in evidence without objection.

It Is Stipulated that the following exhibits may be received in evidence on behalf of Respondent:

Respondent's Exhibit "1", Newspaper clipping from Honolulu Advertiser of April 6, 1944 containing statement of General Emmons (Respondent's Exhibit "4", Duncan case);

Respondent's Exhibit "2-1" to "2-4", inclusive, draft of correspondence between Secretary of War, Attorney General, and Secretary of the Interior, with the President, containing draft of Proclamation, these drafts initialed by various officials. Also [45] carbon copy of letter from the President to the Secretary of War dated February 1, 1943 in answer to letter to President signed by Secretary of War, Attorney General and Secretary of Interior dated January 18, 1943 enclosing draft of Proclamation. Also letter from the President to the Secretary of War dated February 1, 1943, and agreed draft of letter initialed by various officials to General Emmons to be signed by the Governor of Hawaii. All the above are photostats (Respondent's Exhibits "5-1" to "5-4", inclusive, Duncan Case);

Respondent's Exhibit "3", Summary of Cases in Provost Court for month of February, 1944 (Respondent's Exhibit "6", Duncan Case);

Respondent's Exhibit "4", Population Estimates

of Hawaii by Board of Health, and related papers (Respondent's Exhibit "7", Duncan Case);

Respondent's Exhibit "5", Births of Japanese and number reported to Japanese Consulate, 1915 to 1941 (Respondent's Exhibit "8", Duncan Case);

Respondent's Exhibit "6", Estimate of Dual Citizens of Japanese Ancestry in Hawaii (Respondent's Exhibit "9", Duncan Case);

Respondent's Exhibit "7", Nationality Law, Translation (Respondent's Exhibit "10", Duncan Case);

Respondent's Exhibit "8-a" and "8-b", Statement of General Richardson to Eugene Burns, November 13, 1943, and Statement as published in "Washington Star" (Respondent's Exhibit "11-a" and "11-b", Duncan Case);

Respondent's Exhibit "9", Tactical and Strategic Map of Hawaiian Islands and Pacific Ocean Area showing enemy airplane radius and possible mode of attack (Respondent's Exhibit "12", Duncan Case);

Respondent's Exhibit "10", General Orders 38, Rescission of General Orders 31 (Respondent's Exhibit "13", Duncan Case);

Respondent's Exhibit "11", Navy's Report on Pearl Harbor, December 5, 1942, and attached photographs of Pearl Harbor, December 7, 1941 (Respondent's Exhibit "14", Duncan Case);

Respondent's Exhibit "12", Memorandum dated 10 April 1944 giving data as to number of Japanese, Aliens, Dual Citizens, and Citizens interned, released, and relocated, 7 December 1941 to 10 April 1944 (Respondent's Exhibit "15", Duncan Case);

It Is Hereby Stipulated that the testimony of Captain Frank Wickhem, J.A.C.D, Lt. General Robert C. Richardson, Jr., Admiral Chester W. Nimitz, and Mr. R. Murakami adduced at the trial in ex parte Duncan, Habeas Corpus No. 298, this Court, may be received in evidence without objection.

/s/ FRED PATTERSON

/s/ E. J. BETTS

Attorneys for Petitioner

/s/ G. D. CROZIER

United States Attorney

/s/ EDWARD J. ENNIS

Special Assistant to the

Attorney General

Attorneys for Respondent

[Endorsed]: Filed April 20, 1944. [46]

[Title of District Court and Cause.]

STIPULATION

It Is Hereby Stipulated by and between the parties hereto, that Ingram M. Stainback, if called as a witness, would testify:

I.

That he is Governor of the Territory of Hawaii and has occupied said office continuously since August 24, 1942;

II.

That during the period covered by petitioner's arrest and trial (August 20-25, 1942), the civil population in Honolulu and the Territory of Hawaii was orderly and in his opinion, invasion of the Territory by an enemy force was not imminent, and that the trial of civilians before military tribunals or provost courts for offenses against the laws of the Territory was unnecessary and not justified by the conditions which existed in the Territory at said time;

III.

That while the Governor is of the opinion that the declaration of martial law on December 7, 1941, was warranted by the affairs of that day and immediate period, the need and justification for martial law expired and terminated within a period of three months from the said 7th day of December, 1941.

IV.

That upon his assumption of the duties of Governor of the Territory, August 24, 1942, a search was made of the records and files of his office in an effort to discover whether the Proclamation of December 7, 1941 by Governor Poindexter and the Proclamation [48] of December 7, 1941 by General Short were submitted to or approved by the President. The search failed to disclose such submission to or approval by the President of either of the said Proclamations and after official inquiry and investigation by Governor Stainback in Washington he concluded that said Proclamations had never

been submitted to the President or Secretary of Interior for approval. The records of the office of Governor do, however, disclose an exchange of telegrams between the President and the Governor relative to the declaration of Martial Law December 7, 1941, copy of which telegrams are attached hereto and made a part hereof.

It is Stipulated that the foregoing may be considered by the Court as testimony duly given by the said Ingram M. Stainback called as a witness in behalf of the petitioner in the above entitled matter.

Dated this 20th day of April, 1944, Honolulu,
T. H.

/s/ C. D. CROZIER

United States Attorney

District of Hawaii

/s/ EDWARD J. ENNIS

Special Assistant to the Attorney General

Attorneys for Wm. F. Steer,
Col.

/s/ FRED PATTERSON

/s/ E. J. BOTTS

Attorneys for Petitioner

It is so ordered.

Dated this 20 day of April, 1944, Honolulu, T. H.

/s/ J. FRANK McLAUGHLIN

Judge of the above entitled
Court. [49]

Harry E. White

51

S. C. Form No. 11

Signal Corps, United States Army

Received at

War Department Message Center,
Room 3441, Munitions Building,
Washington, D. C.

P49WTEJ PX 42WD Priority

Ft. Shafter 516P Dec 7 1941

The President The White House

Washington D C

I, Have Today Declared Martial Law Throughout
The Territory Of Hawaii And Have Suspended The
Privilege Of The Writ Of Habeas Corpus Period
Your Attention Is Called To Section Sixty Seven Of
The Hawaiian Organic Act For Your Decision On
My Action

POINDEXTER

1106PM Dec 7th 1941 [50]

Standard Form No. 14A

Approved By The President

March 10, 1926

From

The White House

Washington

December 9, 1941

Telegram

Official Business—Government Rates

48 U S Govt Cable

Honorable Joseph B. Poindexter,

Governor, Territory of Hawaii.

Honolulu, Hawaii.

Your Telegram Of December Seventh Received And
Your Action In Suspending The Writ Of Habeas
Corpus And Placing The Territory Of Hawaii Un-
der Martial Law In Accordance With U.S.C., Title
48, Section 532 Has My Approval.

FRANKLIN D. ROOSEVELT

[Endorsed]: Filed April 20, 1944. [51]

[Title of District Court and Cause.]

STIPULATION

It Is Hereby Stipulated by and between the par-
ties hereto that Samuel B. Kemp, if called as a
witness, will testify as follows:

I.

That he is Chief Justice of the Supreme Court and has occupied said office continuously since June 20, 1941;

II.

That during the period covered by petitioner's arrest and trial, to-wit, August 20 to August 25, 1942, the courts of the Territory of Hawaii were ready, willing and prepared to perform their normal judicial functions;

III.

That neither the Commanding General, Hawaiian Division, U. S. Army, nor any of his subordinates ever consulted the Chief Justice with respect to reopening the courts for the trial of persons charged with criminal offenses under the laws of the Territory;

IV.

That after the month of April, 1942, the Chief Justice knows of no sound reason for denial of trial by jury to civilians charged with criminal offense under the laws of the Territory. The only reason assigned, in his discussion with military authorities regarding the reopening of the courts, was that jury trials might require the attendance of some persons engaged in war work and [53] consequently, result in occasional absences from employment.

It Is Stipulated that the foregoing (Paragraphs I, II, III, and IV) may be considered by the Court as testimony duly given by the said Samuel B.

Kemp as a witness called in behalf of the petitioner in the above entitled matter.

Dated this 20th day of April, 1944, Honolulu, T. H.

/s/ G. D. CROZIER

United States Attorney
District of Hawaii

/s/ EDWARD J. ENNIS

Assistant to the Attorney
General
Attorneys for Wm. F. Steers,
Col.

/s/ FRED PATTERSON

/s/ E. J. BOTTS

Attorneys for Petitioner

It is so ordered.

Dated this 20th day of April, 1944, Honolulu, T. H.

/s/ J. FRANK McLAUGHLIN

Judge of the above entitled
Court

[Endorsed]: Filed April 20, 1944. [54]

[Title of District Court and Cause.]

STIPULATION

It is Hereby Stipulated by and between the parties hereto, that:

I.

A file of communiques issued from the Office of

the Commander-in-Chief, Pacific Area, shall be admitted in evidence as Exhibit A-1 for petitioner;

II.

That Lieut. General Robert C. Richardson, Jr., and Admiral Chester W. Nimitz, if called as witnesses would testify that their testimony given in Ex parte Duncan was, in their opinion, equally applicable to the period of August 20-25, 1942.

Dated this 20 day of April, 1944, Honolulu, T. H.

/s/ FRED PATTERSON

/s/ E. J. BOTTS

Attorneys for Petitioner

/s/ G. D. CROZIER

United States Attorney

District of Hawaii

/s/ EDWARD J. ENNIS

Special Assistant to the

Attorney General

Attorneys for Wm. F. Steers,

Col.

It is so ordered.

Dated this 20th day of April, 1944, Honolulu,
T. H.

/s/ J. FRANK McLAUGHLIN

Judge of the above entitled
Court

[Endorsed]: Filed April 20, 1944. [55]

[Title of District Court and Cause.]

STIPULATION

It Is Hereby Stipulated by and between the parties hereto, that:

I.

A file of communiques issued from the Office of the Commander-in-Chief, Pacific Area, shall be admitted in evidence as Exhibit A-1 for petitioner;

II.

That Lieut. General Robert C. Richardson, Jr., who assumed command in this Territory on June 1, 1943, and Admiral Chester W. Nimitz, who assumed command in this Territory of December 18, 1941, if called as witnesses, would testify that their testimony given in Ex parte Duncan was, in their opinion, equally applicable to the period of August 20-25, 1942, and to the offense involved herein.

Dated this day of April, 1944, Honolulu, T. H.

/s/ FRED PATTERSON

/s/ E. J. BOTTS

Attorneys for Petitioner

/s/ G. D. CROZIER

United States Attorney

District of Hawaii

/s/ EDWARD J. ENNIS

Assistant to the Attorney

General

Attorneys for Wm. F. Steers,

Col.

It is so ordered.

Dated this 21st day of April, 1944, Honolulu,
T. H.

/s/ J. FRANK McLAUGHLIN

Judge of the above entitled
Court [56]

[Title of District Court and Cause.]

DECISION

In this habeas corpus proceeding the pertinent facts are as follows:

I.

HISTORICAL FACTS

(a) On the afternoon of December 7, 1941, the Governor of Hawaii, J. B. Poindexter, invoked Section 67 of the Hawaiian Organic Act¹ and by proclamation placed the Territory under martial law; suspended the privilege of the writ of habeas corpus; and delegated to the Commanding General of the Hawaiian Department of the United States Army not only all of his powers as Governor but also all of the "powers normally exercised by judicial officers . . . of this territory . . ." "... during the present emergency and until the danger of invasion is removed"²

(b) By radio the Governor of Hawaii on December 7, 1941, notified the President of the United

¹31 Stat. 141 (1900); 48 U.S.C. 532

²Appendix I

States simply [58] that he had placed the Territory under martial law and suspended the writ.³ The President's approval was requested and it was granted by radio on December 8, 1941.⁴ Not until 1943 was the text of the Governor's December 7 proclamation furnished Washington officials, and it is still doubtful if it has yet been seen by the President. (See Respondent's Exhibits 2-1, 2-2, 2-3, 2-4)

(c) On December 7, 1941, the Commanding General, Walter C. Short, referring specifically to Governor Poindexter's proclamation of the same date, himself issued a proclamation⁵ notifying the people of Hawaii that he had assumed the position of "Military Governor of Hawaii" and had taken over the government of Hawaii.

(d) Likewise on December 7 the self-styled Military Governor of Hawaii issued General Orders No. 4 by which he set up a system of military courts to try civilians for violations of the laws of the United States, the laws of the Territory, and "rules, regulations, orders, or policies" of the military authorities. The procedure prescribed for these military courts was that of special and summary courts-martial.

(e) The courts of the Territory were closed as of December 8 by order of the military.⁷

³Appendix II

⁴Appendix III

⁵Appendix IV

⁶Appendix V

⁷Appendix VI

(f) On December 16, 1941, by General Orders No. 29 the complete closing of the courts because of the existence [59] of martial law was partly relaxed.⁸ The relaxation was worded to include the United States District Court, though it has never been closed since its organization in 1900. The relaxation affected only civil matters.

(g) On January 27, 1942, the Military Governor by General Orders No. 579 modified further his grip upon the "courts in the Territory." By this order it was stated that the courts were restored to their full jurisdiction "as agents of the Military Governor". On the criminal side, however, the courts could not under the order summon a grand jury; on the criminal or civil side they could not grant a jury trial, or at any time grant a writ of habeas corpus.

(h) By appropriate military orders the Military Governor appointed army officers as judges of his provost courts. In August 1942 Major S. E. Murrell, J.A.G.D., was judge of Honolulu Provost Court No. 3 by reason of General Orders No. 122 of the Military Governor.¹⁰

(i) Apparently upon the theory that Governor Poindexter delegated the powers described in his December 7 proclamation to the office of Commanding General, General Short transferred to General Emmons his powers as Military Governor of Ha-

⁸Appendix VII

⁹Appendix VIII

¹⁰Appendix IX

waii on December 17, 1941¹¹ and on the same date General Emmons assumed the position of Military Governor [60] of Hawaii.¹² Accordingly, in August 1942 General Emmons was acting with respect to the civilian population of Hawaii as "Military Governor of Hawaii."

II.

Facts of White Case

On August 20, 1942, the petitioner, Harry E. White, a citizen of the United States and a civilian unconnected with the armed forces of the United States, who had been regularly engaged in the brokerage and investment business in Honolulu, was arrested by representatives of the Provost Marshal of Honolulu. White was placed by the Marshal in the jail of the City and County of Honolulu until August 22, on which date he was brought before the Provost Court over which Major Murrell presided. He was then, for the first time, informed of the charge. It was orally stated to him that he was in that court on a charge of embezzlement growing out of his conduct of his business, in violation of Chapter 183 of the Revised Laws of Hawaii, 1935.

Upon this oral and only notification or specification of the charge, White entered by his attorney a written plea to the jurisdiction of the provost court, thus putting in issue both its jurisdiction of the subject matter and its jurisdiction of his person. (See Exhibit A annexed to Petition) This plea was overruled on both grounds, whereupon White in

¹¹Honolulu Star-Bulletin, Dec. 19, 1941, 9.

¹²Appendix X

writing demanded a trial by jury. (See Exhibit B annexed to Petition) This demand was denied. White then filed a motion for a continuance supported by affidavits from his attorney, indicating lack of time to prepare a defense and ill health on the part of his attorney. (See Exhibit C annexed to Petition) This motion was also denied, and over White's objections the trial proceeded and he was found guilty of violating Chapter 183 of the Revised Laws of Hawaii, 1935, and sentenced to Oahu Prison—a Territorial prison—for five years. This trial started and was completed during the afternoon of August 25, 1942. It does not appear whether White was ever asked to plea to the oral charge.

The Provost Court mittimus ordered the Provost Marshal to take White and to deliver him to the Warden of Oahu Prison. It also ordered said Warden to receive White from the Marshal and to keep him until the sentence had been served. (See Exhibit D annexed to Petition)

There is no appeal allowed under the Military Orders from a provost court judgment. However, as a matter of grace, upon an administrative review by the Military Governor the Provost Court's five-year sentence in the White case was reduced to four years. (See Petitioner's Exhibit Q) No reason for the reduction was assigned.

White was confined as above outlined until released by order of this Court.

At all times herein mentioned and with respect to all acts done by himself or his agents, Generals Short and Emmons functioned as Military Gover-

nor Hawaii, and under the name and in the style thereof. [62]

III.

Further Facts

The highly successful Battle of Midway was over early in June 1942. After that battle it was and is common knowledge that the danger of a land invasion of Hawaii was removed and has never since re-existed. (See Petitioner's Exhibit A-1 under date of June 6 and 7, 1942; Petitioner's Exhibit E; Petitioner's Exhibit N-1 and N-2)

The Army concedes that to date no acts of sabotage have been committed by the Japanese population of the Territory — aliens and citizens included. (See Petitioner's Exhibit G-3)

1. It was stipulated that if Samuel B. Kemp, Chief Justice of the Supreme Court of the Territory of Hawaii, were called as a witness he would testify:

(a) That he has held that office since June 20, 1941;

(b) That during the time of the White case in the Provost Court of Honolulu the Territorial courts were "ready, willing and prepared to perform their normal functions"; (See also Petitioner's Exhibit F)

(c) That he was never consulted by the Military with respect to re-opening the Territorial courts for the trial of persons charged with violating the laws of the Territory;

(d) That subsequent to April 1942 there was no sound reason for denial by the military of trial by

jury to civilians charged with violating Territorial law.

2. It was stipulated that if Albert M. Cristy, [63] Senior Judge of the Circuit Court, First Judicial Circuit, Territory of Hawaii, were called he would testify to the same effect as he did in Habeas Corpus No. 298, In the Matter of the Application of Lloyd C. Duncan for A Writ of Habeas Corpus, in the United States District Court for the District of Hawaii, decided April 13, 1944, to wit, that he knew of no reason why the civil courts of the Territory could not have functioned normally in August 1942 and they would have done so except for military orders to the contrary.

3. Harry Steiner, Senior Judge of the Honolulu District Court, by stipulation testified to like effect with respect to his court which has power under Territorial law to bind defendants over for the action of the circuit court grand jury.

4. It was also stipulated that if I. M. Stainback, presently Governor of Hawaii, were called he would testify in addition to what he said in the Duncan case:

(a) That he has been Governor of Hawaii since August 24, 1942;

(b) That during August 20-25, 1942—the time elapsing between White's arrest and conviction in the Provost Court—the civilian population of Hawaii was orderly, invasion by the enemy was not imminent, and that trial of civilians by military courts for offenses against the laws of Hawaii was not only not necessary but not justified by then existing con-

ditions. (See also Petitioner's Exhibits G-1, H and I).

5. Like stipulation brought General Robert C. [64] Richardson's testimony in the Duncan case into this case. From such it appears that General Richardson was not in August 1942 acting as Military Governor of Hawaii—he was not even in Hawaii at that time. Yet his testimony in another case incorporated here makes him say that:

(a) The further the enemy is pushed back in the Pacific the greater becomes the danger to Hawaii;

(b) The trial of civilians by provost courts for violation of Territorial law was a military necessity. To enforce his orders it is necessary from a military standpoint for the Commanding General to have control of the courts so as to avoid the delays which he believes inherent in civil courts, and also so as to avoid the political (in its best sense) pressures to which he thinks the courts of our country are susceptible. (For an illustration of the General's theory of his power over and control of courts—even civil courts—see General Orders No. 31 (new series), Petitioner's Exhibit L, retracted by General Orders No. 38 (new series), Respondent's Exhibit 10—the most disgraceful threat ever made anywhere against the judicial branch of our Government.)

6. The same stipulation which incorporates the General's testimony also incorporates Admiral Nimitz's testimony. The Admiral, however, says nothing about a military necessity now or in 1942

for the trial of civilians by military courts for violations of Territorial law. He does, however, support the General's contention that martial law was necessary in 1942. [65]

IV.

Contentions

1. The petitioner obviously contends that at least in August 1942 no military necessity existed in Hawaii which might justify the trial of civilians by military courts for alleged violations of the laws of the Territory of Hawaii. Therefore, it is argued, White was unlawfully deprived of his constitutional rights to be charged with the commission of a felony only upon an indictment by a grand jury; to a trial by a jury; to time to prepare his defense and to process to secure the attendance of witnesses in his behalf.

2. The respondent contends that:

(a) The declaration of martial law and the suspension of the privilege of the writ of habeas corpus by the Governor of Hawaii on December 7, and as approved by the President, was valid and has never been revoked. As if the foregoing invocation of Section 67 of the Organic Act be insufficient in mains, suspended." (Up until this date the Military Governor of Hawaii on March 10, 1943, by General Orders No. 2, Section 1.01 (new series) declared that "martial law remains in effect and the privilege of the writ of habeas corpus has been, and remains, suspended." Up until this date the Military Governor had ordered the writ itself suspended.)

Therefore it is said this Court has no jurisdiction to grant the relief sought by the petitioner.

(b) In August 1942, Hawaii was in imminent danger of invasion and hence martial law was then valid; [66] additionally it is said Hawaii has been since December 7 and now is a theater of operations, part of a combat zone, in an active theater of war.

(c) The Provost Court had jurisdiction of the person and of the subject matter in the White case, and because of General Orders No. 4¹³ petitioner had no constitutional rights which the military had to respect.

(d) There was military necessity for trying civilians in provost courts in August 1942 for violation of Territorial law because the Governor of Hawaii had requested the Commanding General to exercise the judicial powers of the Territorial courts "until the danger of invasion is removed", and the General, under the name of Military Governor of Hawaii, has complied with the request of the Governor of Hawaii, the danger of invasion existing in August 1942 and today.

V.

CONCLUSIONS OF LAW

Upon the facts found (Parts I, II and III), I conclude as a matter of law that:

1. It is not necessary to a disposition of this case to decide whether or not martial law validly existed in Hawaii in August 1942.

¹³Appendix V.

2. Assuming a valid state of martial law to have existed in Hawaii in August 1942, White was nevertheless deprived of his constitutional rights under the Fifth and [67] Sixth Amendments because:

(a) The Governor of Hawaii had no judicial powers to delegate to the General, hence the Military Governor's agency—the Provost Court—had neither jurisdiction over White's person nor over the subject matter of the White case—the laws of the Territory of Hawaii.

(b) Ignore the fact that the General relied solely upon the December 7 proclamation of the Governor of Hawaii as the exclusive source of his power to try civilians in his military courts for violation of Territorial law. Can the White case be justified in point of law upon the theory that martial law itself gave the Commanding General power in August 1942 to try civilians for violations of Territorial law? The answer is that it did not, for the evidence clearly reveals that there was not then any military necessity for White's trial in a provost court. Upon this theory also White was deprived of his constitutional rights.

VI.

OPINION

The question of White's guilt or innocence of the charge is not involved in this case.

It is incumbent upon courts, especially United States Courts—

“—in time of war as well as in time of peace, to preserve unimpaired the constitutional safeguards of civil liberty, . . .”¹⁴ [68]

War does not suspend the Constitution, or any part of it. It is the supreme law of the land at all times.¹⁵ Neither generals, governors, nor courts are exempt from its provisions at any time. The Federal Government’s power to wage war and to wage it successfully¹⁶ involves to be sure the rule that in wartime individual rights must yield to the face of necessity—and to the extent necessary—to the nation’s innate and paramount power of self preservation.¹⁷

That White may be guilty of violating the Territorial statute defining the offense of embezzlement and prescribing the penalty therefor or that military courts mete out military justice at an accelerated pace, unhampered by the Bill of Rights, are not reasons for ignoring the mandates of the Fifth and Sixth Amendments.

Constitutional safeguards for the protection of all who are charged with offenses are not to be disregarded in order to inflict merited punishment on some who are guilty.¹⁸

Military jurisdiction over a civilian unconnected

¹⁴Ex parte Quirin, 317 U.S. 1, 19.

¹⁵Ex parte Milligan, 4 Wall. 2, 71 U.S. 2, 120.

¹⁶War Powers Under the Constitution, Charles Evan Hughes, 42 A.B.A. Rep. 232, 238.

¹⁷Hirabayashi v. United States, 320 U.S. 81.

¹⁸Ex parte Quirin, 317 U.S. 1, 25.

with the armed forces must even during war be justified in point of law. What then is the justification for denying to White his constitutional rights?

(a) Upon the record—and it permits of no equivocation—the assigned reason is that the Governor of Hawaii [69] delegated to the General all of the “powers normally exercised by the judicial officers” of the Territory, which powers the General exercised in the White case under the name and style of “Military Governor of Hawaii.”

Of course Hawaii has never lawfully had either a military government or a “Military Governor”, even though it has had both in fact. Such a government and title are lawful only with respect to conquered foreign territory.¹⁹ Lacking the factual basis in Hawaii, United States of America, there is nothing then in the erroneously used title of “Military Governor” which lends support to the situation in the White case. The tinsel of the title here tends to obscure by justifiable American irritation the real question.

The precise and only question is, Did the Governor of Hawaii have any judicial power to delegate? If not, the General's acts in reliance thereon were null and void and effected in the White case a denial of his rights under the Fifth and Sixth Amendments. Inferred Presidential approval would avail naught.

To state the question is to answer it. No citation

¹⁹Ex parte Milligan, 4 Wall. 2, 71 U.S. 2.

other than the Organic Act is necessary. Water cannot rise higher than its source. By that Act, in conformity with the nation's democratic pattern, the government of Hawaii consists of three separate branches—the legislative, the executive, and the judicial—with neither at any time having the powers of the other two. That Act of Congress has been the law in Hawaii continuously and without interruption since 1900. Under it the Governor had no judicial power to give to the Commanding General on December 7, nor did the General need such in order to discharge his military duties.

The record prompts the statement that on December 7, 1941, the Governor of Hawaii "abdicated." History will treat him more charitably.

(b) Though tied to his pleadings—which accord with fact—there is nevertheless therein a faint suggestion that the General in the White case relied not upon the tenth paragraph of Governor Poin-dexter's December 7 proclamation, but upon his own powers as General in an area wherein martial law had been declared.

Despite the fact that the case was not presented to the Court upon this theory, let us look at it.

Fairman, recognizing the correctness of the first conclusion of law above stated, says:

If the situation were governed solely by Section 67, construed nicely as a matter of agency, it might be questioned whether the Governor had not exceeded his powers. But so technical a view should not be taken of a provision meant to cover a multitude of dangers. If

"martial law" was to prevail, it should certainly be of such a form as would respond to the actual emergency. . . . There might have been danger of a different magnitude, such as a condition of "lawless violence," where the commander could properly have acted in aid of the Governor. But with the emergency such as it was . . . certainly the commander had a much larger scope of action whether derived from Section 67 or otherwise."²⁰

The date of the White case will here bear repetition: August 1942.

Fairman, after distinguishing the terms "martial law", "military law", and "military government", says by martial law he means "martial rule". He defines it as [71] a rule springing from out of our nation's power of self preservation depending—

. . . for its justification upon . . . public necessity. . . it is measured by the needs of the occasion.²¹

In the foreword of his book the publisher puts it nicely also by saying:

. . . "martial law" is largely one of powers and liabilities, resting upon a background of what has been done, in fact, under given circumstances, rather than any great wealth of judicial precedents.²²

²⁰The Law of Martial Rule, Col. Chas. Fairman, 2nd edition (1943) at pp. 241-242.

²¹Fairman, *op. cit.* supra Chap. III, p. 47..

²²Fairman, *op. cit.* supra Foreword, p. iii.

Such indeed is and always has been the correct concept of martial law. It was so stated in *Ex parte Milligan* in 1866, which is still law today. Martial law is the law of public necessity and whether the year be 1866 or 1942 the necessity is determined upon and in relation to the then existing facts.²³

As necessity creates the rule, so it limits its duration.²⁴

Thus it is that Anthony rightly states:

Martial law never was intended to be of a permanent or even semi-permanent nature. Its existence is bottomed upon necessity . . . The moment order is restored, the necessity for martial law (hence its justification) ceases to exist.²⁵

What then was the military necessity in Hawaii in August 1942 for the trial of White upon a Territorial charge in a military court? Absolutely none is revealed. But it is argued that the General says it was necessary [72] from a military standpoint and out of deference to the executive branch, especially during wartime, the courts should not look beyond to the facts. Such is a doctrine itself imminently dangerous to the United States. The validity of martial law is always a judicial ques-

²³*Korematsu v. United States*, 140 F. (2) 289, 296.

²⁴*Ex parte Milligan*, 4 Wall. 2, 71 U.S. 2, 127.

²⁵*Martial Law in Hawaii*, J. Garner Anthony, Vol. 31 (1943), *California Law Review* 477, 498.

tion.²⁶ One cannot lift himself up by his bootstraps. Here we are concerned only with the validity of the White case. Saying it was necessary to give him a military trial does not make it so.

A law depending upon the existence of an emergency or other certain state of facts to uphold it may cease to operate if the emergency ceases or facts change even though valid when passed.²⁷

Here it is clear upon the record and upon the facts that White's military trial advanced, preserved, protected the military situation in Hawaii in August 1942 not one iota. Indeed, the converse may be said to be true. Necessity cannot be manufactured even by General Orders. It must be real, not artificial.

So it is that even under this theory, lacking the basis in fact of military necessity, there was no justification for denying to White his constitutional rights as was here done by the Provost Court.

The privilege of the writ is granted and the petitioner is discharged and his bond cancelled.

Dated at Honolulu, T. H., May 2, 1944.

(Signed) J. FRANK McLAUGHLIN

Judge United States District
Court, District of Hawaii

[73]

²⁶*Sterling v. Constantin*, 287 U.S. 378.

²⁷*Chastleton Corp. v. Sinclair*, 264 U.S. 543, 547.

APPENDIX I

Territory of Hawaii

A Proclamation.

Whereas, it is provided by Section 67 of the Organic Act of the Territory of Hawaii, approved April 30, 1900, that, whenever it becomes necessary, the Governor of that territory may call upon the commander of the military forces of the United States in that territory to prevent invasion; and

Whereas, it is further provided by the said section that the governor may in case of invasion or imminent danger thereof, when the public safety requires it, suspend the privilege of the writ of habeas corpus and place the territory under martial law; and

Whereas, the armed forces of the Empire of Japan have this day attacked and invaded the shores of the Hawaiian islands; and

Whereas, it has become necessary to repel such attack and invasion; and

Whereas, the public safety requires:

Now, Therefore, I, J. B. Poindexter, Governor of the Territory of Hawaii, do hereby announce that, pursuant to said section, I have called upon the Commanding General, Hawaiian Department, to prevent such invasion;

And, pursuant to the same section, I do hereby suspend the privilege of the writ of habeas corpus until further notice;

And, pursuant to the same section, I do hereby place the said territory under martial law; [74]

And I do hereby authorize and request the Com-

manding General, Hawaiian Department, during the present emergency and until the danger of invasion is removed, to exercise all the powers normally exercised by me as Governor;

And I do further authorize and request the said Commanding General, Hawaiian Department, and those subordinate military personnel to whom he may delegate such authority, during the present emergency and until the danger of invasion is removed, to exercise the powers normally exercised by judicial officers and employees of this territory and of the counties and cities therein, and such other and further powers as the emergency may require;

And I do require all good citizens of the United States and all other persons within the Territory of Hawaii to obey promptly and fully, in letter and in spirit, such proclamations, rules, regulations and orders, as the Commanding General, Hawaiian Department, or his subordinates, may issue during the present emergency.

In Witness Whereof, I have hereunto set my hand and caused the seal of the Territory of Hawaii to be affixed.

Done at Honolulu, Territory of Hawaii, this 7th day of December, 1941.

[Seal]

J. B. POINDEXTER,

Governor of the Territory of
Hawaii.

By the Governor:

CHARLES M. HITE,

Secretary of Hawaii. [75]

APPENDIX II.

Governor Poindexter's December 7 Radiogram
to the President

"I have today declared martial law (throughout the Territory of Hawaii and have suspended the privilege of the writ of habeas corpus. Your attention is called to Section 67 of the Hawaiian Organic Act for your decision on my action." [76]

APPENDIX III.

President's Radiogram to Governor Poindexter
Washington, D: C.
48° 4 PM 9

Honorable Joseph B. Poindexter
Governor, Territory of Hawaii
Honolulu

Your telegram of December seventh received and your action in suspending the writ of habeas corpus and placing the Territory of Hawaii under martial law in accordance with U. S. C. Title 48 Section 532 has my approval.

FRANKLIN D. ROOSEVELT

[77]

APPENDIX IV.

Proclamation—United States Army

Headquarters, Hawaiian Department

Fort Shafter, 7 December 1941

To the People of Hawaii:

The military and naval forces of the Empire of Japan have attacked and attempted to invade these islands.

Pursuant to section 67 of the Organic Act of the Territory of Hawaii, approved April 30, 1900, the Governor of Hawaii has called upon me, as commander of the military forces of the United States in Hawaii, to prevent such invasion; has suspended the privilege of the writ of habeas corpus; has placed the Territory under martial law; has authorized and requested me and my subordinates to exercise the powers normally exercised by the governor and by subordinate civil officers; and has required all persons within the Territory to obey such proclamations, orders, and regulations as I may issue during the present emergency.

I announce to the people of Hawaii, that, in compliance with the above requests of the Governor of Hawaii, I have this day assumed the position of military governor of Hawaii, and have taken charge of the government of the Territory, of the preservation of order therein, and of putting these islands in a proper state of defense.

All persons within the Territory of Hawaii, whether residents thereof or not, whether citizens of the United [78] States or not, of no matter

what race or nationality, are warned that by reason of their presence here they owe during their stay at least a temporary duty of obedience to the United States, and that they are bound to refrain from giving, by word or deed, any aid or comfort to the enemies of the United States. Any violation of this duty is treason, and will be punished by the severest penalties.

The troops under my command, in putting down any disorder or rebellion and in preventing any aid to the invader, will act with such firmness and vigor and will use such arms as the accomplishment of their task may require.

The imminence of attack by the enemy and the possibility of invasion make necessary a stricter control of your actions than would be necessary or proper at other times. I shall therefore shortly publish ordinances governing the conduct of the people of the Territory with respect to the showing of lights, circulation, meetings, censorship, possession of arms, ammunition, and explosives, the sale of intoxicating liquors and other subjects.

In order to assist in repelling the threatened invasion of our island home, good citizens will cheerfully obey this proclamation and the ordinances to be published; others will be required to do so. Offenders will be severely punished by military tribunals or will be held in custody until such time as the civil courts are able to function.

Pending further instructions from this headquarters the Hawaii Defense Act and the Proclamation of the Governor of Hawaii heretofore is-

sued thereunder shall continue in [79] full force and effect.

Signed) WALTER C. SHORT

Lieutenant General, U. S.

Army, Commanding.

Military Governor of Hawaii. [80]

APPENDIX V.

General Orders No. 4 regulating trial of Civilians
by Military Tribunals

Territory of Hawaii

Office of the Military Governor

Fort Shafter, T. H.

7 December 1941

General Orders

No. 4

By virtue of the power vested in me as Military Governor, the following policy governing the trial of civilians by Military Commissions and Provost Courts is announced for the information and guidance of all concerned.

1. Military commissions and provost courts shall have power to try and determine any case involving an offense committed against the laws of the United States, the laws of the Territory of Hawaii or the rules, regulations, orders or policies of the military authorities. The jurisdiction thus given does not include the right to try commissioned or enlisted personnel of the United States Army and Navy. Such persons shall be turned over to their respective services for disposition.

2. Military commissions and provost courts will adjudge sentences commensurate with the offense committed. Ordinarily, the sentence will not exceed the limit of punishment prescribed for similar offenses by the laws of the United States or the Territory of Hawaii. However, the courts are not bound by the limits of punishment prescribed [81] in said laws and in aggravated cases and in cases of repeated offenses the courts may adjudge an appropriate sentence.

3. The record of trial in cases before military commissions will be substantially similar to that required in a special court martial. The record of trial in cases before provost courts will be substantially similar to that in the case of a Summary Court Martial.

4. The procedure in trials before military commissions and provost courts will follow, so far as it is applicable, the procedure required for Special and Summary Courts Martial respectively.

5. The records of trial in all cases will be forwarded to the Department Judge Advocate. The sentences adjudged by provost courts shall become effective immediately. The sentence adjudged by a military commission shall not become effective until it shall have been approved by the Military Governor.

6. All charges against civilian prisoners shall be preferred by the Department Provost Marshal or one of his assistants.

7. The Provost Marshal is responsible for the

prompt trial of all civilian prisoners and for carrying out the sentence adjudged by the court.

8. Charges involving all major offenses shall be referred to a military commission for trial. ~~Other~~ cases of *lessor* degree shall be referred to provost courts. The maximum punishment which a provost court may adjudge is [82] confinement for a period of 5 years, and a fine of not to exceed \$5,000.00. Military Commissions may adjudge punishment commensurate with the offense committed and may adjudge the death penalty in appropriate cases.

9. In adjudging sentences, provost courts and military commissions will be guided by, but not limited to the penalties authorized by the courts martial manual, the laws of the United States, the Territory of Hawaii, the District of Columbia, and the customs of war in like cases.

By order of the Military Governor:

(Signed) THOMAS H. GREEN

Lt. Col., J.A.G.D.

Executive Officer [83]

APPENDIX VI.

Text of Order of Chief Justice of Supreme Court of Hawaii posted at the entrance of Judiciary Building on December 8, 1941, announcing the closing of all Territorial courts.

“Under the direction of the commanding general, Hawaiian Department, all courts of the Territory of Hawaii will be closed until further notice.

Without prejudice to the generality of the foregoing, all time for performing any act under the process of the Territory will be enlarged until after the courts are authorized to resume their normal functions." [84]

APPENDIX VII.

General Orders No. 29 authorizing limited action of
Territorial Civil Courts

Territory of Hawaii

Office of the Military Governor

Fort Shafter, T. H.

16 December 1941

General Orders

No. 29

Whereas, pursuant to the proclamation of Martial Law in the Territory of Hawaii the operation of the civil courts in the Territory of Hawaii has been suspended.

Now, therefore, by virtue of the authority vested in me as Military Governor, and for the purpose of more effectively carrying out the duties of such Military Governor, it is hereby ordered that all courts in the Territory of Hawaii are hereby authorized to exercise the following powers normally exercised by them during the existence of civil government:

1. The United States District Court for the Territory of Hawaii is hereby authorized to receive and file all petitions for the condemnation of land in the Territory of Hawaii, under any statutes and

laws of the United States authorizing condemnation, needed by the Army or Navy of the United States; to receive and file deposits of checks into the Registry of said court, certificates of the clerk of said court and the Declarations of Taking; to make and enter orders on the Declaration of Taking, and orders of Immediate Possession; and to file and enter notices of pendency of [85] action, with reference to such condemnations.

2. The Supreme Court of the Territory of Hawaii may make and enter all orders necessary for the preservation of the rights of litigants in all pending appeals or appeals which may be perfected to said court, and may hear and determine all such appeals, and make such further orders as may be necessary to carry out or enforce said orders, or any of them.

3. The circuit courts of the Territory of Hawaii and the several divisions thereof are hereby authorized to exercise the following of their normal powers under the civil laws applicable thereto:

Probate: To hear and determine all probate matters, provided, however, that no contested matter may be heard or entertained save by consent of the parties and which does not involve the subpoenaing of witnesses.

Equity: To hear and determine all matters involving trusts, trust accounts, bills of instructions and similar matters, provided, however, that no writs of habeas corpus, prohibition, mandamus, injunction or specific performance shall be issued or granted by any circuit judge, and further provided

that no matter shall be heard or entertained which involves the subpoenaing of witnesses.

Actions at Law: To hear and determine all pending matters not involving jury trials where the subpoenaing of witnesses is not required; to hear and determine all appeals heretofore or hereafter perfected from the district courts; to make and enter all orders or judgments necessary to facilitate the immediate taking of land under condemnation proceedings by the Territorial, City and County, or county officers, orders of possession and details required therewith which do not involve the subpoenaing of witnesses or compulsory process.

Division of Domestic Relations and Juvenile Court: To hear and determine all matters either pending or to be brought for the support and maintenance of women and minor children or other dependants; to hear and determine all probate, guardianship and adoption matters as are exclusively under the jurisdiction of the Division of Domestic Relations; to hear all matters properly coming before the Juvenile Court.

Criminal Cases on Appeal: To hear and determine all pending appeals in criminal cases to the circuit courts of the Territory from district magistrates which do not involve jury trials.

Land Court: To hear and determine all pending matters not requiring the subpoenaing of witnesses; all formal matters connected with subdivisions; all normal minor petitions for the purpose of notation of marriage, death, divorce and other matters re-

quired to be noted on transfer certificates of titles; proceedings for substitution of lost certificates of title; recording of conveyances; issuance of transfer certificates of title; notations of encumbrances; ex parte petitions not involving the subpoenaing of witnesses; and the maintaining of the Office of the Registrar of the Land Court for the purpose of facilitating searching of records and certificates of transfers.

District Courts: Finish all pending matters where the [87] subpoenaing of witnesses is not required.

All Courts: All courts authorized under the civil law to do so may perpetuate testimony or take depositions of witnesses and may make and enter all necessary orders to enable litigants to perfect appeals.

By order of the Military Governor:

(Signed) **THOMAS H. GREEN**

Lt. Col., J.A.G.D.

Executive [88]

APPENDIX VIII

General Orders No. 57

Territory of Hawaii

Office of the Military Governor

Iolani Palace

Honolulu, T. H.

27 January 1942

General Orders

No. 57

Section I. Regulating Imports to Territory of Hawaii.

Section II. Civil Courts.

* * *

Section II. Civil Courts.—Whereas, pursuant to the proclamation of martial law in the Territory of Hawaii the operation of the civil courts in the Territory of Hawaii was suspended; and

Whereas, by General Orders No. 29, dated December 16, 1941, the courts in said Territory were authorized to exercise certain of the powers normally exercised by them during the existence of civil government; and

Whereas, it is now advisable, that said courts be authorized to exercise certain other of their said powers,

Now Therefore, the United States District Court for the Territory of Hawaii, the Supreme Court of said Territory, and the justices thereof, the circuit courts, circuit judges at chambers, land court, juvenile court, tax appeal court and the district magistrates are hereby authorized, as agents of the

Military Governor, to exercise their respective functions according to law, as it existed immediately prior [89] to the declaration of martial law, except in the following respects:

1. No trial by jury shall be had, no session of the grand jury shall be held, nor shall any writ of habeas corpus be issued;

2. No circuit court or district magistrate shall exercise criminal jurisdiction except: Subject to the limitations prescribed by Section 4 in respect to the subpoenaing of witnesses, the circuit and district courts may dispose of cases pending on December 7, 1941, either upon plea or by trial whenever the intervention of a jury is not necessary or by order of nolle prosequi or dismissal on proper motion;

3. No suit, action or other proceeding shall be permitted against any member of the armed forces of the United States for any act done in line of or under color of duty; nor shall any suit, action or other proceeding be maintained against any person employed or engaged in any occupation, business or activity under the direction of the Military Governor or essential to the national defense for any act done within the scope of such employment;

4. No judgment by default shall be entered against any party except upon proof by affidavit or otherwise that the party is not engaged in military service nor employed or engaged in any occupation, business or activity under the direction of the Military Governor, or otherwise, essential to the national defense; nor shall any subpoena issue to re-

quire the attendance as a witness of any person so engaged or employed. [90]

All prior orders inconsistent herewith are hereby repealed.

By order of the Military Governor:

(Signed) THOMAS H. GREEN

Colonel, J.A.G.D., Executive

[91]

APPENDIX IX.

General Orders No. 122

Territory of Hawaii

Office of the Military Governor

Iolani Palace

Honolulu, T. H.

1 July 1942

General Orders

No. 122

Section I. Provost Court No. 3, Honolulu

Section II. Collection and Disposal of Swill, Dry Garbage, and Rubbish.

Section I. Provost Court No. 3, Honolulu.—Major Samuel E. Murrell, Judge Advocate General's Department, is appointed as a Provost Court and is assigned to duty as Provost Court No. 3, at Honolulu, Territory of Hawaii, for the trial of such persons as may be properly brought before it.

By order of the Military Governor:

(Signed) THOMAS H. GREEN

Brigadier General, A. U. S.,

Executive [92]

APPENDIX X

Proclamation of General Enmons Assuming
Military Governorship

To the people of the Territory of Hawaii:

Whereas, the Governor of the Territory of Hawaii, J. B. Poindexter, by a proclamation dated December 7, 1941, and made pursuant to the authority of Section 67 of the Organic Act of the Territory of Hawaii, approved April 30, 1900, called upon the Commanding General, Hawaiian Department, as commander of the military forces of the United States in this Territory, to prevent invasion; suspended the writ of habeas corpus; placed the Territory under martial law; authorized and requested the Commanding General, Hawaiian Department, and his subordinates, to exercise the powers normally exercised by the Governor and by subordinate civil officers; and required all persons within the said Territory to obey such proclamations, orders, and regulations as the Commanding General, Hawaiian Department, or his subordinates, might issue during the present emergency;

Whereas, Lieutenant General Walter C. Short, U. S. Army, Commanding the Hawaiian Department, by proclamation dated December 7, 1941, announced to the people of the Territory of Hawaii that, in compliance with the above recited requests of the Governor of the Territory of Hawaii, he had that day assumed the position of Military Governor of the Territory of Hawaii and had taken charge of the government of the Territory, of the preservation of order therein, and of putting these islands in a proper state of defense;

Whereas, Lieutenant General Walter C. Short, U. S. [93] Army, Commanding the Hawaiian Department, has this day relinquished command of the Hawaiian Department in accordance with War Department radiogram dated December 17, 1941;

Whereas, Lieutenant General Walter C. Short, U. S. Army, Commanding the Hawaiian Department, has this day relinquished his position as Military Governor of the Territory of Hawaii;

And Whereas, I have this date assumed command of the Hawaiian Department in accordance with War Department radiogram dated December 17, 1941;

Now, therefore, I, Delos C. Emmons, announce to the people of the Territory of Hawaii that I have this day assumed the position of the Military Governor of the Territory of Hawaii, and as such Military Governor I adopt and confirm the instructions contained in the fifth to ninth paragraphs, inclusive, of the proclamation of the Military Governor of the Territory of Hawaii dated December 7, 1941, and the general orders and other actions taken pursuant thereto.

Done at Headquarters Hawaiian Department, Fort Shafter, Territory of Hawaii, this 17th day of December, 1941.

(Signed) DELOS C. EMMONS,

Lieutenant General, U. S.
Army, Commanding, Military Governor of Hawaii.

[Endorsed]: Filed May 2, 1944. [94]

[Title of District Court and Cause.]

EXCEPTIONS TO DECISION

The Respondent, Wm. F. Steer, Colonel, Infantry, United States Army, Provost Marshal, Central Pacific Area, respectfully objects and excepts to the findings and conclusions contained in the Decision filed herein on May 2, 1944, and to the ruling and order granting the privilege of the writ of habeas corpus, discharging the petitioner, and cancelling his bond.

Dated: Honolulu, T. H., this 3rd day of May, 1944.

G. D. CROZIER,

United States Attorney,
District of Hawaii.

EDWARD TOWSE,

Assistant United States At-
torney, District of Hawaii.
Attorneys for Respondent.

The foregoing exceptions are hereby allowed.

Dated: Honolulu, T. H., this 3 day of May, 1944.

/s/ J. FRANK McLAUGHIN,

Judge, United States District
Court for the Territory of
Hawaii.

[Endorsed]: Filed May 3, 1944. [96]

In the United States District Court for the
Territory of Hawaii

Habeas Corpus No. 300

In the Matter of the Application
of

HARRY E. WHITE

For a Writ of Habeas Corpus

JUDGMENT

Pursuant to the findings and conclusions of the Court filed in the above entitled Court on the 2nd day of May, 1944,

It Is Hereby Ordered, Adjudged and Decreed that the writ of habeas corpus issued herein be and the same hereby is sustained, and the petitioner be and he is hereby ordered discharged from custody of the respondent, and

It Is Further Ordered, Adjudged and Decreed that in event an appeal is taken in this matter, the petitioner's Five Hundred Dollars (\$500.00) appearance bond shall continue as and for his bond pending appeal of the above entitled matter.

Dated: Honolulu, Hawaii, May 2, 1944.

/s/ J. FRANK McLAUGHLIN,

Judge, United States District

Court in and for the Territory of Hawaii.

[Endorsed]: Filed May 4, 1944. [98]

[Title of District Court and Cause.]

ORDER ON TAKING APPEAL

Upon Motion of Respondent, William F. Steer, Colonel, United States Army, and it appearing that the Findings and Conclusions as contained in Decision were not made in open Court at the conclusion of the hearing and argument on April 21, 1944, and good cause otherwise appearing therefor, it is hereby

Ordered, Adjudged and Decreed that Rule 126 of this Court shall not be applicable to this cause and the time for taking, allowing and perfecting appeal from the final decision and judgment herein filed on May 4, 1944, be and the same hereby is fixed at the period of ninety (90) days from the filing of said judgment and until and including August 2, 1944; and it is

Further Ordered, Adjudged and Decreed that rule 124 of this Court shall not be applicable to this cause and the appeal herein may be taken by filing a written notice of appeal from the aforesaid final decision and judgment within the aforesaid ninety (90) day period and in the manner prescribed in the rules of Civil Procedure for the District Courts of the United States

Dated this 4th day of May, 1944, at Honolulu,
T. H.

/s/ D. E. METZGER,

Judge, United States District
Court, District of Hawaii.

/s/ J. FRANK McLAUGHLIN,

Judge, United States District
Court, District of Hawaii.

[Endorsed]: Filed May 4, 1944. [100]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that the Respondent, Wm. F. Steer, Colonel, Infantry, United States Army, Provost Marshal, Central Pacific Area, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the final judgment filed herein on May 4, 1944, sustaining the Writ of Habeas Corpus issued herein and discharging the Petitioner from the custody of the Respondent.

Dated this 4th day of May, 1944, Honolulu, T. H.

G. D. CROZIER,

United States Attorney,

District of Hawaii.

EDWARD TOWSE,

Assistant United States At-
torney, District of Hawaii.

Attorneys for Respondent

Appellant.

Allowed:

J. FRANK McLAUGHLIN,

Judge of the above entitled

Court. [102]

Receipt of a copy of the within Notice of Appeal
is acknowledged this 4th day of May, 1944.

(S) **FRED PATTERSON,**

(S) **E. J. BOTTS.**

[Endorsed]: Filed May 5, 1944. [101]

[Title of District Court and Cause.]

STIPULATION FOR RECORD

It is stipulated by and between counsel for Re-
spondent Appellant and Petitioner Appellee that
the record on appeal in these proceedings shall con-
sist of the entire record in this case, to-wit, the
following:

1. Petition for Writ of Habeas Corpus.
2. Order to Show Cause.

3. Stipulation filed April 18, 1944 substituting Colonel Wm. F. Steer as Respondent and amending Petition.

4. Answer to Petition and Order to Show Cause.

5. Traverse to Return to Order to Show Cause.

6. Writ of Habeas Corpus, Marshal's Return and excerpt from Proceedings showing physical production of Petitioner in Court.

7. Stipulation and minute entry that Answer to Petition and Rule shall constitute Return to Writ and Traverse shall constitute Traverse to Return.

8. Four Stipulations filed April 20, 1944 and Stipulation filed April 21, 1944 amending stipulation filed April 20, 1944, with all exhibits and testimony admitted in evidence by said stipulations and Orders of Court.

9. Oral Opinion of Court delivered April 21, 1944 and minute entry showing exception, notice of appeal and Court's allowance of ninety (90) days to perfect appeal.

10. Decision of Court rendered May 2, 1944.

11. Exceptions to Decision filed May 3, 1944.

12. Final Judgment sustaining Writ of Habeas Corpus dated May 4, 1944.

13. All Court minute entries. [104]

14. Order on Taking Appeal filed May 4, 1944.

15. Notice of Appeal dated May 4, 1944 to the Circuit Court of Appeals, Ninth Circuit.

16. This Stipulation.

17. Clerk's certification of transcript of record on appeal.

Dated this 4th day of May, 1944, Honolulu, T. H.

/s/ G. D. CROZIER

United States Attorney, Dis-
trict of Hawaii

/s/ EDWARD TOWSE

Assistant United States At-
torney, District of Hawaii

Attorneys for Respondent

Appellant

/s/ FRED PATTERSON

/s/ E. J. BOTTS

Attorneys for Petitioner Ap-
pellee

[Endorsed]: Filed May 5, 1944. [105]

From the Minutes of the United States District
Court for the Territory of Hawaii

Saturday, April 15, 1944

[Title of Court and Cause.]

On this day came Mr. E. J. Botts, and Mr. Fred Patterson, counsel for the petitioner herein, and also came Mr. G. D. Crozier and Mr. Edward A. Towse, United States District Attorney and Assistant United States District Attorney, respectively. Mr. William J. Hughes, Lt. Col. Judge Advocate General's Department, Mr. Eugene V. Slatery, Lt. Col. Office of the Military Governor, Mr. Angus M. Taylor, Jr., Lieutenant, United States Army, and Mr. Nils Tavares, Attorney General of

the Territory of Hawaii. This case was called for hearing on the matter of issuance of process.

Following a discussion on this matter by respective counsel and the Court, issuance of the Order to Show Cause was granted by the Court. The Order to Show Cause was made returnable on Thursday, April 20, 1944 at 10 a. m.

The Court granted petitioner three days after filing of the return to the Order to Show Cause to file his traverse. [106]

From the Minutes of the United States District
Court for the Territory of Hawaii
Tuesday, April 18, 1944

[Title of Court and Cause.]

On this day came Mr. E. J. Botts and Mr. Fred Patterson, counsel for the petitioner herein, and also came Mr. Edward J. Ennis, Special Assistant to the Attorney General of the United States, Mr. William J. Hughes, Lt. Col. Judge Advocate General's Department, Mrs. G. D. Crozier and Mr. Edward A. Towse, United States Attorney and Assistant United States District Attorney, respectively, Mr. Eugene V. Slattery, Lt. Col. Office of the Military Governor, and Mr. Nils Tavares, Attorney General of the Territory of Hawaii, counsel for the respondent, Clarence T. Stevenson. This case was called for hearing on the procedure to be followed, introduction of evidence, and on the issuance of the writ of habeas corpus.

Upon motion of Mr. Ennis, the name of William

F. Steer, Col. United States Army, Provost Marshal, was substituted as respondent in this case in place of Clarence T. Stevenson by order of the Court.

It was stipulated by respective counsel that the testimony offered in the Lloyd C. Duncan case, Habeas Corpus No. 298, may be offered in this case.

Answer to the petition and order to show cause was presented to the Court and was ordered to be placed on file.

Petitioner's traverse was presented to the Court and was ordered to be placed on file.

Motion for the issuance of the Writ was made by Mr. Botts. [107]

Mr. Ennis objected to the issuance of the writ and moved for the dismissal of the petition upon the grounds that the privilege of the writ of habeas corpus in this Territory remains suspended. Motion to dismiss the petition was denied by the Court and an exception was noted and allowed the respondent.

Issuance of the writ, returnable at 3:15 this day was then granted by the Court and an exception was noted and allowed the respondent. Service of the writ was accepted by Mr. Ennis on behalf of the respondent.

At 3:20 p. m., petitioner was produced before the Court.

Mr. Patterson then moved that petitioner be enlarged on bail. This motion was objected to by Mr. Ennis.

Motion for an enlargement of the petitioner was then granted by the Court, bail being set at \$500.00. Mr. Ennis excepted to the granting of this motion, an exception being allowed the respondent.

It was then stipulated by respective counsel that the return to the order to show cause be considered the return to the writ of habeas corpus, the traverse to the return to the order to show cause be considered the traverse to the return to the writ of habeas corpus. [108]

From the Minutes of the United States District
Court for the Territory of Hawaii
Wednesday, April 19, 1944

[Title of Court and Cause.]

On this day came Mr. E. J. Botts, counsel for the petitioner herein, and also came Mr. Edward J. Ennis, Special Assistant to the Attorney General of the United States, Mr. G. D. Crozier and Mr. Edward A. Towse, United States District Attorney and Assistant United States District Attorney, respectively, and Mr. William J. Hughes, Lt. Col. Judge Advocate General's Department. This case was called for the purpose of making proper service of the writ upon the respondent.

Following a discussion on this matter, the United States Marshall was directed by the Court to personally serve Col. William F. Steer, Provost Marshall, with the writ and to make due return of his service. [109]

From the Minutes of the United States District
Court for the Territory of Hawaii
Thursday, April 20, 1944

[Title of Court and Cause.]

On this day came Mr. E. J. Botts and Mr. Fred Patterson, counsel for the petitioner herein, and also came Mr. Edward J. Ennis, Special Assistant to the Attorney General of the United States, Mr. G. D. Crozier and Mr. Edward A. Towse, United States District Attorney and Assistant United States District Attorney, respectively, Mr. William J. Hughes, Jr., Lt. Col. Judge Advocate General's Department, and Mr. Eugene V. Slattery, Lt. Col. Office of the Military Governor, for the respondent William F. Steer, Provost Marshal. This case was called for hearing.

It was stipulated by respective counsel that the Stipulation filed on April 18, 1944, be amended as to Paragraph 3, line 1, by changing therein Paragraph III to Paragraph II.

Stipulation between counsel for the admission in evidence of the testimony and evidence in the case of ex parte Lloyd C. Duncan, Habeas Corpus No. 298 of this court was presented to the court, allowed and ordered to be placed on file.

Statement by Admiral Halsey appearing in the Army & Navy Register under date of January 22, 1944 inviting the Japanese fleet to come out and fight was admitted in evidence as Petitioner's Exhibit "A," marked and ordered filed.

Speech by General Arnold under date of Jan-

uary 17, 1943, covering spearheads driven into Japanese Pacific Defense, was admitted in evidence as Petitioner's Exhibit "B," marked and ordered filed.

Quotation by the War Department giving its present plan of accepting citizens of Japanese ancestry under the selective service draft was admitted in evidence as Petitioner's Exhibit "C," marked and ordered filed. [110]

Article appearing in the Army & Navy Journal under date of December 15, 1943, with reference to statements made by both Admiral Halsey and the Secretary of Navy inquiring as to the whereabouts of the Japanese fleet, was admitted in evidence, as Petitioner's Exhibit "D," marked and ordered filed.

Article appearing in the Army & Navy Register under date of March 4, 1944, by Maj. Gen. Hale, Commander of the 7th Air Force, giving the progress of the war in the Central Pacific Area and with a statement to the effect that imminent danger of invasion was not lifted until after the Battle of Midway, was admitted in evidence as Petitioner's Exhibit "E," marked and ordered filed.

A report of cases handled by both the Supreme Court and Circuit Courts of Hawaii, covering the period 1939 to 1943, was admitted in evidence as Petitioner's Exhibit "F," marked and ordered filed.

Copy of letter dated April 30, 1943, from Galen M. Fisher to Chas. F. Loomis, was admitted in

evidence as Petitioner's Exhibit "G-1," marked and ordered filed.

Copy of letter dated May 12, 1943, from W. A. Gabrielson to Chas. F. Loomis, was admitted in evidence as Petitioner's Exhibit "G-2," marked and ordered filed.

Copy of letter dated May 17, 1943, from Kendall J. Fielder to Chas. F. Loomis, was admitted in evidence as Petitioner's Exhibit "G-3," marked and ordered filed.

Copy of letter dated April 4, 1944, from Ralph C. Scott to Garner Anthony, covering war risk rates in Hawaii, was admitted in evidence as Petitioner's Exhibit "H," marked and ordered filed.

Comparative Statement of gross income and consumption tax collections and tax base for the calendar years 1941, 1942, and 1943, was admitted in evidence as Petitioner's Exhibit "I," marked and ordered filed.

Newspaper clipping from the Honolulu Star-Bulletin under date of January 1, 1943, containing statement of Lt. Gen. Emmons, was admitted in evidence as Petitioner's Exhibit "J-1," marked and ordered filed.

Newspaper clipping from the Honolulu Star-Bulletin under date of July 5, 1943, containing statement of Lt. Gen. Richardson, was admitted in evidence as Petitioner's Exhibit "J-2," marked and ordered filed.

Newspaper clipping from the Honolulu Star-Bulletin under date of June 7, 1943, containing statement of Lt. Gen. Richardson, was admitted in

evidence as Petitioner's Exhibit "J-3," marked and ordered filed.

Newspaper clipping from the Honolulu Star-Bulletin under date of February 4, 1944, containing Proclamation of C. W. Nimitz, Admiral, United States Navy, Military Governor of the Marshall Islands, was admitted in evidence as Petitioner's Exhibit "J-4," marked and ordered filed.

Newspaper clipping from the Honolulu Star-Bulletin under date of July 15, 1943, containing an address by Lt. Gen. Richardson to the Honolulu Chamber of Commerce, was admitted in evidence as Petitioner's Exhibit "J-5," marked and ordered filed.

Newspaper clipping from the Honolulu Star-Bulletin under date of May 27, 1943, containing a statement by Lt. Gen. Emmons, was admitted in evidence as Petitioner's Exhibit "J-6," marked and ordered filed. [111]

Copy of the petition to the Secretary of State by citizens of Japanese ancestry requesting that steps be taken to negotiate with the Japanese government for a simplified procedure of expatriation by American-Japanese with that government was admitted in evidence as Petitioner's Exhibit "K," marked and ordered filed.

Copy of General Orders No. 31, Office of the Military Governor of Hawaii, dated August 25, 1943, was admitted in evidence as Petitioner's Exhibit "L," marked and ordered filed.

Copy of "The Volunteer" was admitted in evi-

dence as Petitioner's Exhibit "M," marked and ordered filed.

Newspaper clipping from the Honolulu Star-Bulletin under date of March 10, 1943, containing an address by Admiral Nimitz, was admitted in evidence as Petitioner's Exhibit "N-1," marked and ordered filed.

Newspaper clipping from the Honolulu Star-Bulletin under date of January 1, 1943, containing an interview with General Emmons by Frank H. Bartholomew, United Press Agent, on the defense of Hawaii, was admitted in evidence as Petitioner's Exhibit "N-2," marked and ordered filed.

Newspaper clippings from the Honolulu Star-Bulletin under dates of June 7, 1943 and December 7, 1943, containing statements by Admiral Nimitz, were admitted in evidence as Petitioner's Exhibit "N-3," marked and ordered filed.

Newspaper clipping from the Honolulu Star-Bulletin under date of January 27, 1944, containing statement by Rear Admiral Robert B. Carney, Chief of Staff to Admiral Halsey, on the progress of the naval attack on Rabaul, Kavieng, and Nauru, was admitted in evidence as Petitioner's Exhibit "N-4," marked and ordered filed.

Newspaper clipping from the Honolulu Advertiser under date of January 19, 1944, containing statement by Rear Admiral Robert B. Carney, Chief of Staff to Admiral Halsey, on the progress of the naval attack on Rabaul, Kavieng, and Nauru, was admitted in evidence as Petitioner's Exhibit "N-5," marked and ordered filed.

Newspaper clipping from the Honolulu Advertiser under date of February 4, 1944, containing statement of Undersecretary of War, Robert Patterson, with reference to the battle for the Marshall Islands, was admitted in evidence as Petitioner's Exhibit "N-6," marked and ordered filed.

Memorandum to Col. Wm. R. C. Morrison by Lt. Angus M. Taylor, Jr., covering the number of American-Japanese now serving in the United States Army, casualties thereof, number of Japanese interned in Hawaii and evacuated to the mainland for internment, number of Japanese employed on military and naval projects, and the work performed by petitioner during his imprisonment was admitted in evidence as Petitioner's Exhibit "O," marked and ordered filed.

Newspaper clipping from the Honolulu Advertiser under date of April 6, 1944, containing a statement by Gen. Emmons, Commander of the Western Defense Command, was admitted in evidence as Respondent's Exhibit No. 1, marked and ordered filed. [112]

Photostatic copy of draft of letter from the Secretary of War, Attorney General, and Secretary of Interior, to the President, photostatic copy of letter of the President's reply thereto, together with a copy of the proposed proclamation, one by the Governor of Hawaii and one by General Emmons, covering the restoration of civil authority in the Territory of Hawaii, was admitted in evidence as Respondent's Exhibit No. 2-1, marked and ordered filed.

Photostatic copy of a letter dated February 1, 1943 to Secretary Stimson from the President bearing a typewritten signature, and photostatic copy of a letter dated January 18, 1943, to the President bearing the actual signature of the Secretary of War, Attorney General, and the Secretary of the Interior, and annexed thereto, copy of the proposed proclamation, one by the Governor of Hawaii and one by General Emmons, covering the restoration of civil authority in the Territory of Hawaii, was admitted in evidence as Respondent's Exhibit No. 2-2, marked and ordered filed.

Photostatic copy of the letter from the President to the Secretary of War, dated February 1, 1943, covering the restoration of civil authority in Hawaii, was admitted in evidence as Respondent's Exhibit 2-3, marked and ordered filed.

Photostatic copy of agreed draft of a letter from the Governor of Hawaii to General Emmons, dated January 18, 1943, covering the restoration of civil authority in Hawaii, was admitted in evidence as Respondent's Exhibit No. 2-4, marked and ordered filed.

Summary of cases in Provost Court for the month of February, 1944, was admitted in evidence as Respondent's Exhibit No. 3, marked and ordered filed.

Statistics of population estimated for the Territory of Hawaii prepared by the Bureau of Vital Statistics at Honolulu, for the period from July 1, 1943 to July 1, 1944, was admitted in evidence as

Respondent's Exhibit No. 4, marked and ordered filed.

Report covering the number of births of persons of Japanese ancestry registered with the Japanese Consulate in Hawaii and with the Bureau of Vital Statistics of the Territory of Hawaii was admitted in evidence as Respondent's Exhibit No. 5, marked and ordered filed.

Memorandum containing figures on the estimate of dual citizens of Japanese ancestry in the Territory of Hawaii as of July 1, 1941, was admitted in evidence as Respondent's Exhibit No. 6, marked and ordered filed.

Translation of Japanese law on Japanese citizenship of persons of Japanese ancestry born outside of Japan was admitted in evidence as Respondent's Exhibit No. 7, marked and ordered filed.

Article appearing in the Honolulu Star-Bulletin under date of November 13, 1943, written by Eugene Burns, Associated Press War Correspondent, on his interview with military experts including Gen. Richardson on the possibility of a second attack on Pearl Harbor, was admitted in evidence as Respondent's Exhibit No. 8-A, marked and ordered filed. [113]

Newspaper clipping from The Sunday Star under date of November 13, 1943, containing an article in which Gen. Richardson is quoted as saying that he believes another attack by the Japanese on Pearl Harbor is likely to occur within the next four months, was admitted in evidence as Respondent's Exhibit #8-B, marked and ordered filed.

Map and legend, showing Central Pacific Area with defense and attack areas, was admitted in evidence as Respondent's Exhibit #9, marked and ordered filed.

Copy of General Orders No. 38, Office of the Military Governor of Hawaii, dated October 14, 1943, was admitted in evidence as Respondent's Exhibit #10, marked and ordered filed.

The Navy's Report dated December 5, 1942 on Pearl Harbor damage caused by Japanese attack on December 7, 1941, together with photographs showing such damage, was admitted in evidence as Respondent's Exhibit #11, marked and ordered filed.

Report of Japanese interned in the Territory of Hawaii from December 7, 1941 to April 10, 1944, was admitted in evidence as Respondent's Exhibit #12, marked and ordered filed.

Stipulation between counsel for the admission in evidence of the testimony of Ingram M. Stainback, Governor of Hawaii, if he were called on behalf of the petitioner herein, was presented to the Court, allowed, and ordered to be placed on file.

Stipulation between counsel for the admission in evidence of the testimony of Samuel B. Kemp, Chief Justice of the Supreme Court, Territory of Hawaii, if he were called on behalf of the petitioner herein, was presented to the Court, allowed, and ordered to be placed on file.

Stipulation between counsel for the admission in evidence of Lt. Gen. Robert C. Richardson, Jr.'s and Admiral Chester W. Nimitz's testimony as given in *ex parte* Duncan, to be applicable to the

period August 20-25, 1942, was presented to the Court, allowed, and ordered to be placed on file.

Summary of Persons Arrested and convicted in the Provost Court for the calendar year 1942 was admitted in evidence as Petitioner's Exhibit "P", marked and ordered filed.

Series of communiques issued by Admiral Nimitz for the period from June 4, 1942 to March 30, 1944, were admitted in evidence as Petitioner's Exhibit "A-1," marked and ordered filed.

List of Provost Court prisoners presently incarcerated was admitted in evidence as Petitioner's Exhibit "Q", marked and ordered filed.

Affidavit of Admiral Nimitz, Commander in Chief, United States Pacific Fleet and Pacific Ocean Areas, giving his opinion that the Territory of Hawaii is still in imminent danger of invasion, that the suspension of the privilege of the writ of habeas corpus as well as martial law in the Territory of Hawaii is necessary, and that the trial, conviction, and sentence of Lloyd C. Duncan was necessary for the prosecution in the Territory of Hawaii of the war against Japan, was admitted in evidence as Respondent's Exhibit #13, marked and ordered filed.

Affidavit of Robert C. Richardson, Jr., Lieut. Gen., United States Army, Commanding General, United States Army Forces, Central Pacific Area, giving his opinion that the Territory of Hawaii is [114] still in imminent danger of invasion, that the suspension of the privilege of the writ of habeas corpus as well as martial law in the Territory of Hawaii is necessary, and that the trial, conviction, and sen-

tence of Lloyd C. Duncan was necessary for the prosecution in the Territory of Hawaii of the war against Japan, was admitted in evidence as Respondent's Exhibit #14, marked and ordered filed.

General Orders No. 4, dated December 7, 1941, was admitted in evidence as Respondent's Exhibit #15, marked and ordered filed.

General Orders of the Military Governor, Territory of Hawaii, published in the Honolulu Advertiser under date of March 10, 1943, was admitted in evidence as Respondent's Exhibit #16, marked and ordered filed.

At 3:40 p.m., both sides having rested their case, argument was had by Mr. Ennis on behalf of the respondent. Argument on behalf of the petitioner was continued to Friday, April 21, 1944 at 10 a.m.

Mr. Ennis submitted memorandum of authorities and moved that the application for a writ of habeas corpus be dismissed as the privilege of the writ of habeas corpus remains suspended.

Said motion was overruled by the Court and an exception allowed the respondent. [115]

From the Minutes of the United States District
Court for the Territory of Hawaii
Friday, April 21, 1944

[Title of Court and Cause.]

On this day came Mr. E. J. Botts and Mr. Fred Patterson, counsel for the petitioner herein, and also came Mr. Edward J. Ennis, Special Assistant to the Attorney General of the United States, Mr.

G. D. Crozier and Mr. Edward A. Towse, United States District Attorney and Assistant United States District Attorney, respectively, Mr. William J. Hughes, Lt. Col. Judge Advocate General's Department, and Mr. Eugene V. Slattery, Lt. Col. Office of the Military Governor. This case was called for argument.

At 9:45 a.m., argument was had by Mr. Botts on behalf of the petitioner.

Motion by Mr. Ennis to amend the stipulation filed on April 20, 1944 as to Paragraph II, relating to the testimony of Lieut. Gen. Richardson and Admiral Nimitz was granted by the Court, an amended stipulation to be filed.

At 11:10 a.m., further argument was had by Mr. Ennis, and at 11:40 a.m., closing argument was had by Mr. Patterson.

At 12:07 p.m., this case having been submitted, the Court ruled that the writ of habeas corpus heretofore issued herein shall be made permanent and ordered the petitioner discharged from custody. The Court stated that he will file a written opinion to that effect later.

Exceptions were noted to the Court's ruling and notice of appeals pursuant to Rule No. 124 of this court was given.

Upon request of Mr. Ennis, the respondent was allowed ninety days within which to perfect an appeal. [116]

From the Minutes of the United States District
Court for the Territory of Hawaii
Thursday, May 4, 1944

[Title of Court and Cause.]

On this day came Mr. E. J. Botts and Mr. Fred Patterson, counsel for the petitioner herein, and also came Mr. G. D. Crozier and Mr. Edward A. Towse, United States District Attorney and Assistant United States District Attorney, respectively, for the respondent herein. This case was called for entry of judgment.

Form of Judgment was presented to the Court, was thereafter signed and ordered to be placed on file.

Order on Taking Appeal, signed by the Judges of this court, which suspended, for the purpose of perfecting the appeal in this cause, the operation of Rules No. 124 and No. 126 of this court, was presented to the Court and ordered to be placed on file.

The Judgment reads as follows:

[Judgment set out in full at page 92.]

The Order on Taking Appeal reads as follows:

[Order on Taking Appeal set out in full at page 93.] [117]

Excerpt from Proceedings Held in the Matter of
the Application of Harry E. White for Writ of
Habeas Corpus, on April 18, 1944, at 2:30 P.M.,
Before Hon. J. Frank McLaughlin, Judge.

(The Court signs order returnable at 3:15 p.m.,
April 18, 1944)

Mr. Ennis: As Attorneys for the Provost Marshal, your Honor, if it would meet your Honor's approval we would stipulate that the writ is deemed served, and we will produce the prisoner in response to the writ.

The Court: Yes.

Mr. Patterson: He is present.

(Mr. Harry E. White enters the chambers)

The Court: You are Harry E. White?

Mr. White: Yes.

The Court: Sit down. The record may show that the applicant has been produced by the Provost Marshal and his Attorneys in response to the writ. And the Petitioner is now in the custody of the Court. (To a Police Officer) I don't know whom you represent, but you are relieved of the responsibility.

(Signed) ALBERT GRAIN

Official Court Reporter [119]

[Title of District Court and Cause.]

EXCERPT

From the above-entitled matter, held in the Judge's Chambers, U. S. District Court, Honolulu, T. H., on April 18, 1944, at 2:30 o'clock p. m.,

Before

Hon. J. Frank McLaughlin, Judge

Mr. Ennis: I'd like to also stipulate, your Honor, that the answer and return to the order to

show cause be deemed the answer and return to the writ.

Mr. Patterson: And the traverse to your answer.

Mr. Ennis:—Be deemed as an answer to the writ, as well as the answer to show cause.

Mr. Patterson: We agree to that.

The Court: Very well. [120]

I, Albert Grain, Court Reporter, U. S. District Court, Honolulu, T. H., do hereby certify as follows:

That I am the Official Court Reporter of the above-named Court;

That the foregoing is a true and correct transcript of excerpt in Habeas Corpus No. 300, in the matter of the application of Harry E. White, for a writ of habeas corpus, held in the Judge's Chambers, above-named Court, on April 18, 1944;

That same was taken by me on a shorthand machine and transcribed from my notes.

ALBERT GRAIN

May 8, 1944 [121]

TESTIMONY FROM HABEAS CORPUS No.
298—CASE OF LLOYD C. DUNCAN, HELD
IN THE U. S. DISTRICT COURT, HONO-
LULU, T. H., BEFORE THE

HON. DELBERT E. METZGER

April 5, 1944	Hon. Harry Steiner
April 5, 1944	Hon. Albert M. Cristy
April 6, 1944	Gustaf K. Sproat
April 7, 1944	Hon. Ingram M. Stainback
April 7, 1944	Capt. J. Frank Wickhem
April 8, 1944	Capt. J. Frank Wickhem
April 8, 1944	Robert K. Murakami
April 11, 1944	Robert K. Murakami
April 11, 1944	Lt. Gen. Robert C. Richardson, Jr.
April 11, 1944	Admiral Chester W. Nimitz

[122]

HON. HARRY STEINER,

a witness in behalf of the Petitioner, being duly sworn, testified as follows:

Direct Examination

By Mr. Anthony:

Q. What is your name?

A. Harry Steiner.

Q. Where were you born? A. Honolulu.

Q. What is your position at the present time?

A. District Magistrate of Honolulu. First District Magistrate.

(Testimony of Hon. Harry Steiner.)

Q. How old are you? A. Fifty-three.

Q. Were you in the service during the last war?
[123]

A. I was.

Q. What branch of the service?

A. Infantry.

Q. Judge, how long have you been District Magistrate in Honolulu? A. Twenty years.

Q. Twenty years? Where did you go to school?

A. Punahou and Yale University.

Q. Graduate of Yale Law School?

A. Yale Law School and Yale College.

Q. Does your family live here?

A. That's right.

Q. And your father lives here?

A. He was until the time of his death.

Q. When did your father come here, by the way?

A. In '82.

Q. The Police Court of Honolulu is one of the busiest courts in this Territory, is it not?

A. It is.

Q. At my request, had you compiled statistics of cases tried in the Police Courts of Honolulu?

A. Yes, I have.

Q. Do you have those with you, Judge?

A. I have them summarized.

Q. I see. You have a memorandum of those cases? A. Yes, I have. [124]

Q. Will you please give us the number of cases that have been tried in the District Court since the war?

(Testimony of Hon. Harry Steiner.)

A. Since the war there have been 69,582 criminal cases, and 2,641 civil. That makes about 72,000 matters. That is all matters. I might state that does not include all the commitments to the Territorial Hospital that I left out.

Q. In addition to your duties as a trial court trying civil and criminal cases, you also have certain statutory duties in regard to the insane, do you not?

A. Yes.

Q. Those cases are not included in the statistics?

A. I have left those out.

Q. The 72,000 just comprises actual civil and criminal cases tried?

A. Yes. I included the forfeitures.

Q. Yes, forfeitures.

A. Yes, that's included.

Q. That's a criminal case?

A. It's a criminal case.

Q. What kind of cases do you try down there, Judge?

A. Misdemeanors on the criminal side, where the punishment may be anywhere up to a thousand dollars or imprisonment up to one year, or imprisonment and fine. In the civil side, jurisdiction up to \$500 in practically all cases. And in certain matters which have been going on for the last six months, involving the landlord, no limit; we have original [125] exclusive jurisdiction between landlord and tenant matters.

Q. Judge, have you got those figures broken down by years?

A. Yes, I have.

(Testimony of Hon. Harry Steiner.)

Q. Could you give us the figures by years?

A. In 1942—these are civil matters—in 1942 there were tried 969 civil cases. In 1943, there were 1,240 cases. And the first three months of this year there have been tried 432, which makes a total of 2,641 civil cases. And as to criminal cases, in 1942, 15,011 tried. In 1943, 43,775. And in the first three months of this year, 11,796—total of 69,582 criminal matters.

Q. Now Judge, you were on the bench at the outbreak of war, were you not? A. I was.

Q. Just state briefly what happened to your Court down there?

A. Well, Monday morning we cleared the calendar of the cases that were then to be tried, and at eleven o'clock the order came up from the Military Governor that martial law had been declared.

Q. The Monday following the blitz?

A. Yes, at eleven o'clock on the 8th. And from that time on we ceased to function as to all new criminal matters. We were allowed to finish up the pending criminal cases, and we were allowed to continue with civil matters, in most matters [126] except cases involving the armed personnel and employees working on Government projects.

Q. Where did the Provost Court sit?

A. In the District Court. They used the Court-house, the equipment, and—

Q. The Court and its facilities?

A. Everything. And we sat with the Provost

(Testimony of Hon. Harry Steiner.)

Judges and helped them merely in an advisory capacity.

Q. How long did this advisory business continue?

A. To my recollection up to September of 1942.

Q. Then there was a relaxation?

A. Upon military order; yes, there was a relaxation.

Q. And then, after March 10th, 1943, you resumed complete jurisdiction, did you not?

A. Not complete.

Q. Not complete? A. No.

Q. Why was it not complete?

A. Well, we haven't taken over matters of blackout.

Q. Oh, yes. There are defense act regulations.

A. And there are certain individuals, like utility employees, who have been frozen by the Military Governor, and we have no jurisdiction over those individuals.

Q. Oh, you mean you don't try offenses involving the violation of military orders? You don't try any of those cases?

A. That's right. And no offenses involving the utility [127] employees on their work.

Q. You mean to say if a fellow that works for the Hawaiian Electric gets in a fight, you don't try that kind of a case?

A. On their job. Certain individuals, for example, the milk employees, the dairymen, we don't try those.

(Testimony of Hon. Harry Steiner.)

Q. The milkmen?

A. So I understand. We never have any cases like that.

Q. Do you know the basis for that?

A. No. I haven't a copy of that order, of the March order.

Q. Well, we needn't bother now, Judge. While you were down there in your advisory capacity, did you have occasion to see a great many of those Provost Court cases being tried?

A. Yes.

Q. Were there any cases that you ever saw down there that were being tried that the District Court could not have handled had it been permitted to do so?

A. No, I know of none.

Q. Judge Steiner, you have seen a great many of the phases of the life of this community during your 20 years on the bench, have you not, down there in the Police Court?

A. Yes, I have.

Q. What have you to say as to the conduct of this community since the outbreak of war up to the present time?

Mr. Ennis: Objection. It is calling for a general conclusion, your Honor. It has no relevancy to the issue here that I can see.

The Court: Overruled. [128]

Mr. Ennis: Exception.

The Witness: May I go ahead?

The Court: Yes.

A. The conduct has been good, I would say, the general characterization has been very good.

(Testimony of Hon. Harry Steiner.)

Q. Have you ever seen anything that is unusual or extraordinary other than the fact that there are a lot of people here and a lot of business going on?

A. Nothing whatsoever.

Q. How about the character of the cases that come before your Court, are they any different in any degree than those prior to the war?

A. Just about the same.

Q. Well, have you ever noticed any kind of a case down there in the Provost Court which the District Court of Honolulu could not have handled fully and adequately?

A. No. I know of no cases that we could have not handled.

Q. How many Judges were there at the outbreak of war? A. Three.

Q. Who were they?

A. Judge Griffith Wight, and Judge Leslie P. Scott and myself, with a fourth as temporary in case of absence or disqualification of one of the regular three Judges.

Q. Wight and Scott were both ex-Army officers, too, in the last war like yourself?

A. They are, that's right, that's right. [129]

Q. You were perfectly ready to go ahead and try all the cases that were brought before the Court, were you not? A. That's right.

Q. And you would have done so but for the imposition of military orders? A. Yes.

Mr. Anthony: That's all.

(Testimony of Hon. Harry Steiner.)

By the Court:

Q. May I ask, who decided what cases should be brought before your Court or before the Provost Court? A. The Military Governor.

Q. As to each case individually or were they general orders?

A. By a general order. And they had down there in the District Court a coordinator, so that any particular case they could have taken the case from the District Court and given it to the military.

Q. Well, this coordinator, then, as I take it, had or exercised supervision over every criminal case that originated, and he routed it either to your Court or to the Provost Court, according to his mind?

A. That's right.

Q. That's it? And that officer was appointed by whom? A. By the Military Governor.

The Court: All right.

Mr. Anthony: Did you finish, your Honor?

The Court: Yes. [130]

Q. Do you try cases of assault and battery that occur on military reservations in your Court?

A. We do.

Q. You have concurrent jurisdiction with this Court?

A. We have. But that's civilian personnel.

Q. That's what I mean, where the defendant is a civilian. That's all.

Cross Examination

By Mr. Ennis:

Q. Were there not cases tried before the Provost

(Testimony of Hon. Harry Steimer.)

Courts for violation of military orders which were not violations of the laws of the Territory, of the County or City? A. That is correct.

Q. Then there were cases tried before the Provost Courts which could not be tried by your Court in the sense that the actions were not offenses under the civil laws which you administered?

A. That's right. But, as I remember, to end the action the local Governor's power is so sweeping as to internal security, I could think of no subject that he couldn't have covered by some local law; but they were actually cases that were not covered, that we have no jurisdiction over except local laws; we have no jurisdiction over the Military Governor's orders, or Federal.

Q. But there was conduct and actions of civilians which were violations of military orders which were not also violations of any law you administered, or of any regulations which the Governor had, in fact, issued under the "M-Day" Bill, apart from what he might have issued? [131]

A. Yes.

Q. There were such cases? A. Yes.

Q. Tried in the Provost Court?

A. That's right.

Mr. Ennis: That's all, Judge. Thank you.

(Witness excused.)

The Court: Do you have another witness at hand?

Mr. Anthony: Yes, I have two short witnesses that I would like to get rid of; they've been hanging around.

HON. ALBERT M. CRISTY,

a witness in behalf of the Petitioner, being duly sworn, testified as follows:

Direct Examination

By Mr. Anthony:

Q. Your name, please?

A. Albert M. Cristy.

Q. What is your present position, Judge?

A. I am Second Judge of the Circuit Court, First Judicial Circuit.

Q. How long have you held that position?

A. Since the latter part of October, 1926.

Q. Where were you born, Judge?

A. Hudson, Ohio, near Akron.

Q. And you went to the public schools and then to Brown University? [132]

A. I went to the grammar school in Cleveland and the high school in Providence, Rhode Island, and Brown University and Harvard Law School.

Q. Have you ever held any other office in the Territory other than Judge?

A. I was Deputy City and County Attorney from 1915 until 1919.

Q. And you are now Judge of the Circuit Court of the First Circuit? A. Yes.

Q. Judge, were you here at the outbreak of the war?

A. What do you mean by the outbreak of— with Japan?

Q. On December 7th?

A. I have been here; I was in town, yes. I

(Testimony of Hon. Albert M. Cristy.)

have been constantly in the Territory except for one trip in 1930.

Q. You have been here since the outbreak of war, you have been here up to date?

A. Constantly.

Q. Judge, immediately after the outbreak of war, will you state briefly what happened so far as your Court was concerned, for the benefit of this record?

A. Well, the exact details as to dates and times and exactness—but I can say that on the morning after the so-called blitz the Judges assembled in Court with the Chief Justice and posted a notice of suspension of business until things were organized. Shortly after that, and during that week or the [133] following week, several conferences were had with officers delegated from the Military Governor's Office as to the contribution that the Judges of the Court could make toward assisting, and anything that would be necessary in curtailing their activity for a time being until things were settled down, or acting as assistants in any capacity that their judicial qualifications permitted. And suggestions were made as to how the Judges could conduct their business, both as to continuances and as to setting of cases so as to make the least disturbance or necessity for popular gathering around the Courthouse, but carry on the business of the Court. We got nowhere for quite awhile.

Q. The Courts were initially closed, you recall that, by military order?

(Testimony of Hon. Albert M. Cristy.)

A. Well, it was both by military order and an order of the Chief Justice of the Supreme Court, acting in cooperation with the suggestions of the military.

Q. Judge, what kind of cases do you handle there, or have you handled, briefly?

A. Well, practically everything in the roster of the Court over there.

Q. That's a general Court of record?

A. It is a general Court of record, and at the particular time of the blitz I think that my calendar was the Probate and Equity calendar. I wouldn't be positive on that, as to recollection, but I think that that was so. But by reason of the illness of one of the Judges, I was taking on most anything that was [134] available.

Q. You have handled criminal cases, civil cases and jury trials?

A. Oh, last year the criminal calendar was in my division, and we have rotated calendars of all the divisions, all work, regularly.

Q. What have you to say as to your observation on the kind of cases that are coming before the Court now as compared with prior to the war, we'll say?

A. The same type of cases, perhaps with an emphasis on sex cases more than usual in number on the criminal side of the Court. And the other division, the usual civil actions, probate, equity, land court.

(Testimony of Hon. Albert M. Cristy.)

Q. Judge, is there any reason that you can think of why any criminal case could not be tried in the Courts of this Territory, if they had jurisdiction?

A. Well, on the contrary, the division last year, as I told you, was the criminal division that my division handled, and we were at all times available not only for the usual calendar arrangements but were able and ready and had the time and the personnel to put on any emergency trial that would be needed. I speak of emergency trial, as we have attempted throughout the year to adjust the trials so that the witnesses engaged in the war effort or being of military personnel or in any way having a reasonable excuse could be met and their attendance adjusted so as to make it as little inconvenient for their attendance as possible; or to advance cases so as to obtain the testimony of [135] people whose activity ought to be considered. In other words, the calendar was such that, although we had a year practically of very little trial from December, 1941, until the fall of 1942, the criminal calendar which I took over in January, 1942, was what we would call normally a heavy calendar in the sense that there had been an accumulation. But even with that accumulation there was at no time and difficulty of a Prosecutor setting a special emergency trial to accommodate witnesses who might need to be elsewhere later on, or might be lost if their testimony weren't taken.

Q. Judge, is there any reason why the Circuit

(Testimony of Hon. Albert M. Cristy.)

Court should not have conducted its business within a few weeks after the outbreak of war?

A. I know of none.

Q. Is there anything in the community, that of order or disorder in the community, that prevented that in any way?

A. I heard of no disorder or none was called to the Court's attention that would have hindered the Court from conducting any trial either jury or jury waived.

Q. Well, is it fair to say that the activity of the Circuit Courts was curtailed only by reason of the military order? A. That is all.

Q. And there was no necessity that you know of that required the curtailment of those activities?

A. On the contrary, I was one of the Judges picked out as the liaison officer, so to speak, of the Court to attempt to [136] find ways and means to activate business in a more normal way.

Q. Judge, you have observed the people of this community over the past two years and before that. What have you to say of the present conduct of this community?

Mr. Ennis: Objectionable; it is too general, your Honor. I don't know what Counsel means by that question.

The Court: Well, it isn't clear to me.

Mr. Anthony: I'll try to make it a little more specific.

Q. What have you to say as to the order or dis-

(Testimony of Hon. Albert M. Cristy.)

order or law-abidingness or unlawfulness or lawlessness of this community at the present time?

A. Well, I have seen nothing but the ordinary conduct on the street and in the places where people congregate that is affected by the restrictions of various sorts that have been necessary restrictions of conduct. But as to orderliness, I have found nothing out of the way in any part of the community that I have contacted.

Q. Do you know any reason for the trial of civilians in military courts for offenses that don't actually affect the security of the military establishments?

Mr. Ennis: Your Honor, I object on the grounds that the witness is not qualified as one who might possess the reasons why that is necessary. Obviously, the witness has not been qualified as a military expert.

Mr. Anthony: I am excluding the military cases.

The Court: Read that question back. [137]

(The Reporter read the last question.)

Mr. Anthony: On crimes against the laws of war.

The Court: Overruled.

Mr. Ennis: Exception.

A. Well, we are—including myself and the other Judges that are over there—in the business of sitting as Judges of trials of civilians that are charged with offenses against the general laws, and I see no—I had contact with no reason why we

(Testimony of Hon. Albert M. Cristy.)

shouldn't be able to function in this community on those kind of cases. And I will add this, that in the conference with the military, taken shortly after the blitz, it was pointed out by me personally to the officer who was in conference that all of the Judges were ready and willing at any intimation from the military establishment that any phase of a case that might come before our Courts that needed to be delayed, or for any other reason had a military aspect to it, that we would be ready and willing and alert to grant continuance, postponement, and investigations of those things, so that there would be no hampering in any way from the Courts of the Territory, that we presided over anything affecting the military necessities, if that is an answer to your question.

Q. Judge, do you entertain a layman's view on whether or not we are in imminent danger of invasion?

A. I have been trying to find out what they mean by invasion. As a lawyer rather than a layman, the question of invasion doesn't include in my dictionary a sporadic attack or a threat of attack or a desire to attack. [138]

Mr. Ennis: I object to that. The Judge is not qualified to testify as to what American law is. I think no witness is.

The Court: Not qualified as to what?

Mr. Ennis: To testify on the question of American law.

(Testimony of Hon. Albert M. Cristy.)

Mr. Anthony: He's talking about the dictionary.

Mr. Ennis: The Judge is answering a question as to what he thinks as a lawyer. Now, I think what American law is, distinguished from foreign law, is a question for us to argue on, not for us to take testimony on.

Mr. Anthony: I don't propose to take testimony on that.

The Witness: I was trying to clarify it. I haven't completed the answer, Mr. Ennis. I'm trying to clarify the background as to how to answer Mr. Anthony's question as a layman on the threat of invasion. I had nothing come to my attention ever since I've been here, and particularly since the blitz, to indicate that there has been anything that comes within the category of an invasion. But there have been, undoubtedly, for awhile threats of raids. Just how far the planes can fly now for raids from any bases, I am not militarily informed on.

Mr. Ennis: Your statement is as a layman, not as one militarily informed?

The Witness: As a layman who keeps pretty closely in touch with what the military inform me on in their communiques, which I take on their face value until shown the contrary.

Mr. Anthony: That is all. [139]

Cross Examination

By Mr. Ennis:

Q. Judge, I understood you to say that you per-

(Testimony of Hon. Albert M. Cristy.)

sonally knew of no necessity why civilian offenses should not be tried in your Court?

A. There has been nothing hindering it, from our angle, no, sir.

Q. Now, you are not acquainted, I take it, with the military information or the information in the hands of the military authorities here on any enemy activities, either present or potential, in this Territory?

A. Well, that goes without saying that the military have not taken me into their confidence or shown me their secret files. But I was speaking in my answer about offenses being charged against civilians violating civilian laws. There has been nothing in the way of trying these cases in any court that I have had contact with, and I have had contact with all the Circuit Courts in this particular city, and with the Judges of the District Court, during the full two years.

Q. Your Court does not have jurisdiction to try offenses by civilians in the form of breaches of military orders, is that correct?

A. Well, the question there comes in, as I understand it, as I understand the law, Mr. Ennis, that those matters should be before the Federal Court and not before the Territorial Court.

Q. But your Court does not have jurisdiction to try those [140] offenses by civilians?

A. That is a matter of law, correct. Our Court would handle only the offenses against the Territorial laws committed any place within the Ter-

(Testimony of Hon. Albert M. Cristy.)

ritory, by an agreement between military and the Courts and the prosecuting officials ever since 1915, since I have been here. Military personnel violating those laws have been turned over to the military for trial, but civilians have been tried in the civilian courts. But as to violating regulations of the military orders by civilians, my understanding of the law is—and I am here to be corrected, or any time—that those are matters before the Federal Court unless they have been taken away by some other method of usurpation.

Mr. Ennis: That is all, Judge Cristy. Thank you.

Mr. Anthony: That is all. Thank you very much.

○ (Witness excused.) [141]

GUSTAF K. SPROAT.

a witness in behalf of the Petitioner, being duly sworn, testified as follows:

Direct Examination

By Mr. Anthony:

Q. Your name, please? A. Gus K. Sproat.

Q. Sorry I kept you waiting. A. Yes, sir.

Q. You are Clerk of the Supreme Court of the Territory? A. Yes, I am.

Q. How long have you held that position?

A. Since January 26, 1931.

(Testimony of Gustaf K. Sproat.)

Q. At my request, have you examined the records of your office and prepared—— A. Yes.

Q. —a statement relative to the number of cases in that Court and other Courts?

A. Yes.

Q. Do you have that information with you?

[142]

A. I have those figures with me.

Q. May I see them, please? (Witness hands Mr. Anthony several sheets of paper.) Do you have copies of these?

A. I have office copies, but you may copy those.

Q. These sheets that you have prepared, what do they consist of, Mr. Sproat?

A. They consist of the number of cases coming before the Circuit and Supreme Courts of the Territory for the last five-year period, beginning in 1939 and ending December 31, 1943.

Q. There are how many Circuit Courts? There were five?

A. There were five; there are four now.

Q. There is a Court of Record on each of the outside islands? A. Yes.

Q. That's where this Court sits, that is the First Circuit? A. Yes.

Q. Do you have the record of the civil and criminal cases in the Circuit Courts as well as the Supreme Court of the Territory?

A. Yes, I have.

Mr. Anthony: We offer this in evidence, if your Honor please.

(Testimony of Gustaf K. Sproat.)

The Court: Let's see what it shows.

Mr. Anthony: It shows, your Honor, that the Courts have been open, doing their business.

The Court: Well, outside of that discussion, what actually does it show there? [143]

Q. How many cases were in the Supreme Court during that period, in the year 1939, Mr. Sproat?

A. A total of 35 cases. That includes civil and criminal.

Q. And how about the rest of the years?

A. Forty-one for 1940; ten for 1941; twenty for 1942; twenty-four for 1943. That takes in a total of 130 over the five-year period.

Q. Now in the Circuit Courts, how many cases have you had?

A. We have had civil matters, 11,135 cases; probate, 9,371; criminal, 2,669; juvenile and bastardy, 5,533; making a grand total of all courts of 28,838 cases.

Q. You have that broken down by years?

A. I have those broken down by years.

Mr. Anthony: We offer this in evidence, your Honor please.

The Court: Received in evidence as Exhibit "H".

(Petitioner's Exhibit "H" was received in evidence.)

[Petitioner's Exhibit H is set out in full as Petitioner's Exhibit K, starting at page 406 of this printed record.]

Mr. Anthony: That is all.

Mr. Ennis: No cross-examination.

(Witness excused.)

Honolulu, T. H.

April 7, 1944

9:00 o'clock, a. m.

(The hearing continued.)

The Clerk: Habeas Corpus Docket No. 298, in the matter of the application of Lloyd C. Duncan for a Writ of Habeas Corpus, called for further hearing.

Mr. Anthony: Ready for the Petitioner. May we proceed, your Honor?

The Court: You may proceed.

Mr. Anthony: Governor Stainback, will you take the stand, please?

HON. INGRAM M. STAINBACK,

Governor of the Territory of Hawaii, a witness in behalf of the Petitioner, being duly sworn, testified as follows:

Direct Examination

By Mr. Anthony:

Q. Your name, please?

A. Ingram M. Stainback.

Q. At the present time you are the Governor of the Territory of Hawaii? A. I am.

Q. Governor, where were you born?

A. Somerville, Tennessee.

Q. Did you go to school in Tennessee? [145]

A. Yes.

Q. And where did you go to college?

(Testimony of Hon. Ingram M. Stainback.)

A. Princeton and the University of Chicago Law School.

Q. What year did you come to the Territory of Hawaii? A. 1912.

Q. And you have resided in the Territory ever since 1912? A. I have.

Q. Have you ever held any Federal office, any office other than Governor?

A. Yes, quite a number.

Q. What are those offices, Governor?

A. Attorney General of the Territory, U. S. Attorney for the District of Hawaii, U. S. Federal Judge; besides, I have been on a number of commissions, public utility commissions—several others.

Q. Under the Territorial Government?

A. Yes.

Q. In between—

The Court: You were in the Army also, were you not?

A. Yes. Yes, I was in the last war for two years, but I still resided in the Territory.

Q. You were an officer in the U. S. Army during the last war? A. Yes, I was.

Q. During the times when you did not hold public office, [146] did you practice law in this Territory? A. I did.

Q. And that involved a general practice of law?

A. A general practice of law, yes, mostly civil, very little criminal.

(Testimony of Hon. Ingram M. Stainback.)

Q. Do you believe that you are quite familiar with the affairs of this Territory?

A. I think so.

Q. You, of course, were here on December 7, 1941?

A. Yes, I was Federal Judge at that time.

Q. You were familiar with the conduct of the community immediately following December 7th and the state of public order and disorder—are you?

A. I think so.

Q. Governor, was there anything that prevented the courts from functioning in accordance with law immediately following the attack of December 7, 1941?

A. No. As a matter of fact, I did hold Federal Court on December 8th in the adjoining room.

Q. Immediately after the attack, you recall the military authorities took over portions of Lolani Palace, do you recall that?

A. Yes.

Q. Do you recall what occurred in regard to the placing of barbed wire around Government buildings? [147]

A. Yes, barbed wire was placed around there and—

Q. The City Hall?

A. City Hall, I believe; I am not sure; I had no occasion to go over there. This building was barricaded with sand bags and the front doors closed, and we had to come in the back way for several months; machine guns were placed back in this corridor back there, sand bags erected.

(Testimony of Hon. Ingram M. Stainback.)

Q. What have you to say as to the conduct of the population during the period following the outbreak of war, the civil population?

A. I would say it was admirable from every standpoint; the civil population gave a wonderful account of itself, both on the 7th and subsequent to; the various organizations that had prepared for attack and everybody seemed to be most intent on doing what they could to protect this Territory, and the Government as a whole, the United States, I should say.

Q. Governor, when were you appointed to your present office?

A. The latter part of July, 23rd, I think; I took office August 17, 1942.

Q. Since you were appointed Governor, can you tell the Court how the various departments of the Territorial Government have functioned in a general way?

A. Well, I would say normally, they exercised their normal functions. Of course, we have adopted some war regulations, [148] due to the fact that we are under war conditions, like food importation and raising of food, the fact that the Government has gone into the raising of food which ordinarily, of course, wouldn't occur; we have exercised a number of functions under what we call the "M-Day Bill." Otherwise, I should say we proceeded as under peacetime.

Q. The Hawaii Defense Act granted broad

(Testimony of Hon. Ingram M. Stainback.)

powers to the Governor, as you know. Is that not correct? A. Yes.

Q. Do you know of any other piece of legislation in the United States or any state of the United States, or in any English-speaking country, that grants any broader powers than the Hawaii Defense Acts grants to the Chief Executive?

A. I don't know of any. Of course, I couldn't say that I have examined all the legislation of all the states and countries—but I personally don't know of any.

Q. Will you briefly state the operations of the Office of Civilian Defense in this Territory, what briefly has been done in that regard?

A. Well, it is what the name designates. We have provided for the care and protection of civilians during the time of emergency. They have set up first aid stations and ambulance corps, blood banks, and matter of that kind to meet any casualties that might result from bombs or attack of any kind.

Q. An elaborate system of air raid wardens?

[149]

A. An elaborate system of air raid wardens, fire wardens and fire companies, volunteer companies, first aid volunteers, and a great many matters relating to the protection of the civilian community. We have even set up first aid hospitals, and some of these hospitals we have used—because of the pressure, we are using them now not as first aid but as general civilian hospitals.

(Testimony of Hon. Ingram M. Stainback.)

Q. Governor, do you recall, do you have any recollection of the approximate number of people engaged in O.C.D. activities? A. Now or——

Q. At the present time.

A. I think I have the figures; some 700 or 800, I think; 803 as of March, 1944. In November, 1942, we had 2,513.

Q. Are they full-time employees, Governor?

A. Yes, I think that is correct.

Q. In addition to that, there is a large number of volunteer workers for the O.C.D., is that not a fact?

A. Oh, yes, quite a number. I wouldn't be too positive as to whether all those people are full-time employees. I have no data to show whether they are all full-time employees.

Q. What was the budget of the O.C.D. when you took office, Governor?

A. Well, in November, 1942, is when I have the statement; that was three months after I took office; a little over two months. It was \$738,441.13 per month. [150]

Q. What is it at the present time?

A. March, 1944, \$193,349.78. The only increase has been in certain emergency medical services, due to taking over certain tubercular patients. Outside of that, there has been a decrease in every department.

Q. What has been the progress of the O.C.D. organization in regard to the expenditure of funds?

(Testimony of Hon. Ingram M. Stainback.)

In which direction has that gone since your term of office?

A. Well, it has gone down, I'd say, some 74 percent.

Q. And what is the occasion for that?

A. Well, because we don't feel that there is justification for keeping up the expenditures on a great many lines. For instance, we are doing away now—we haven't yet but we are going to do away with these first aid stations, and we will have mobile units, volunteer units. I might add that practically all this reduction was done under and with the advice of Dr. Bayer, who is down here to survey this. He is head of the O.C.D. medical department—he was; he is also connected with the Public Health of New York State.

Q. That's Colonel Bayer attached to the Public Health Service?

A. Yes, Colonel Bayer, who is a Colonel in the O.C.D.

Q. Have you had occasion during your term of office to visit the other islands of this group, Governor?

A. Yes, I visited all of them at least once or twice or [151] more, several times, I think, with the exception of Lanāi and one of the small islands; but Hawaii, Kauai, Maui, Molokai, I visited.

Q. From time to time you confer with members of the Armed Forces in regard to the state of this Territory?

A. Yes, yes, we have to.

Q. On preparedness?

(Testimony of Hon. Ingram M. Stainback.)

A. Yes, hardly a week passes that there isn't some question that has a bearing on the Armed Forces. Last week there was the question of water on Kauai; we had to divert certain funds to increase water supply in certain districts because of the presence of large numbers of Armed Forces. I have to keep familiar with that. On Maui, the President of the Board of Health is now over there—at least was the other day—in connection with certain diseases brought in by Marines. And in my duties as Governor, naturally I've got to be thoroughly familiar with the Armed Forces here where they are.

Q. Do you obtain any information in regard to the state of defense of these islands?

A. I think I know very thoroughly the state of defense of this island. I have visited most every—I won't say dugout, but the principal parts.

Q. Installations?

A. Installations. I have, on this island and the other islands, watched the operations of the air defense system, that is, what you might term the Radar. I have talked with [152] many many officers, both Army and Navy, on various questions involving the set-up here, to get their opinions on various problems, not always in an official way. In fact, we very seldom meet that something isn't discussed or brought out with reference to either military or Navy—maybe not on any particular installation or matters of that sort. I have talked with high Army officers and low officers on questions of

(Testimony of Hon. Ingram M. Stainback.)

the possibility of invasion and matters of that sort in great detail.

Q. Governor, having in mind your statutory duties under Section 67 of the Hawaiian Organic Act, do you have an opinion whether or not Hawaii is now in imminent danger of invasion?

A. Yes, I have an opinion.

Q. Will you please state your best judgment on that question?

A. I do not think it is in imminent danger of invasion.

Q. Having in mind your duties as Chief Executive under Section 67 of the Hawaiian Organic Act, do you have an opinion whether or not the public safety requires the suspension of the privilege of the Writ of Habeas Corpus?

A. I do not think so.

Q. Will you give us your best judgment whether or not any military necessity exists for the trial of civilians in provost courts for crimes and offenses other than crimes against the laws of war? [153]

Mr. Ennis: I object, your Honor, on the grounds that I don't believe the Governor is qualified to answer the question based upon military necessity.

Mr. Anthony: If the Court please—

The Court: Well, he's asking for his opinion based upon his knowledge and his responsibility as Chief Executive of the Territory. I think that that shows a sufficient qualification to have and express an opinion on that subject.

(Testimony of Hon. Ingram M. Stainback.)

Mr. Ennis: Well, I'd like to make my point clear, your Honor. I thought the prior questions as not objectionable because they were addressed to the Governor's statutory duties under Section 67 of the Organic Act, his view on what the public safety requires and the suspension of the privilege of the writ, and his view as to whether there is an imminent danger of invasion. But the last question that Mr. Anthony asked was, whether in his opinion military necessity required provost courts. Now, there is nothing in Section 67 of the Organic Act which bears on that specific question, and I think that, including in the question the phrase whether in his view military necessity required it, goes beyond the qualifications of the Chief Executive of the Territory.

Mr. Anthony: Your Honor, this will get us on an argument on the question of law, which later will be addressed to this Court, namely, whether or not Mr. Ennis' idea of how martial law operates is correct, or whether the Petitioner's idea is correct. Our view is that the Chief Executive, in truth and [154] in fact and in law, is the Chief Administrator, if I may use that phrase, of martial law when it is properly operated. I concede, that is not the way it is being done at present, but if any view of the law is correct, then it is important to ascertain from the Chief Executive whether or not any necessity exists for the trial of civilians in military tribunals.

The Court: Objection overruled.

(Testimony of Hon. Ingram M. Stainback.)

Mr. Ennis: Exception.

The Witness: May I have the question?

(The Reporter read the last question.)

A. I know of no reason, military or otherwise, why they should be tried in provost courts.

By Mr. Anthony:

Q. Governor, you have given us your best executive judgment on whether the Territory is in imminent danger of invasion and whether the public safety now requires the suspension of the privilege of the Writ of Habeas Corpus, and your answer has been that it does not and that Hawaii is not in imminent danger of invasion. Will you please give us your best judgment as to the answer to those questions during the year 1943?

A. I do not think it was in any imminent danger of invasion during the year 1943. I would say, subsequent to Midway, in 1942, that we could never call this Territory in imminent danger of invasion. I understand the word "imminent" means about to occur immediately. [155]

Q. That's a matter for the Court.

A. Yes. So under that interpretation I certainly have not felt, since I have been Governor, that we have ever had any imminent danger of invasion.

Q. Now, in your judgment did the public safety require the suspension of the privilege of the writ of Habeas Corpus during the year 1943?

A. No.

(Testimony of Hon. Ingram M. Stainback.)

Q. Governor, you have seen from time to time the General Orders issued out of the Office of the Military Governor, have you not?

A. Yes, I think my office is usually furnished a copy, I believe.

Q. At any time since you have been the Chief Executive of this Territory, have any of those orders been submitted to you for approval?

A. No, not to my recollection.

Q. The practice has been to issue those orders without your approval, is that not correct?

A. Yes, that is true.

Q. At any time during your tenure as Chief Executive have you ever been notified in advance of the issuance of any of the General Orders that have been issued out of the Office of the Military Governor?

A. I believe they did issue an order on the chlorination of water; I know, I think we discussed that prior to an order, [156] direction, that I gave that the water be chlorinated. I am not sure they issued an order on that; I believe they did but I am not sure. That was talked over quite at length with General King.

Q. That involves some financial arrangement?

A. Yes, that is a question of who was going to pay the bill and other matters, too.

Q. Governor, are you familiar with the existence of censorship in this Territory?

A. Yes, I am.

(Testimony of Hon. Ingram M. Stainback.)

Q. Do you know whether or not the mails between here and the mainland of the United States are now censored? A. Yes.

Mr. Ennis: Objection. It is irrelevant. May I have the answer stricken, your Honor?

Mr. Anthony: I have no objection to it going out, for Counsel to get in his objection.

The Court: It may be stricken.

Mr. Anthony: I believe it is relevant on the issue of what the public safety requires.

The Court: It is stricken.

Mr. Anthony: I don't hear the Court.

The Court: It is stricken.

Mr. Anthony: I now ask that the witness be permitted to answer the question. I believe it is relevant to the issue as to what the public safety requires. [157]

The Court: The witness answered the question. Upon motion that it be stricken, it was ordered stricken.

Mr. Anthony: And your Honor now sustains an objection to me asking that question, is that the Court's position?

The Court: I don't follow you.

Mr. Anthony: I will ask the question again.

Q. Is there censorship of the mails between Hawaii and the mainland of the United States at the present time?

Mr. Ennis: Objection, on the ground that the answer to that question is irrelevant to the issues in the case, your Honor.

(Testimony of Hon. Ingram M. Stainback.)

The Court: Well, as I understand it, that is the same question that was asked and answered before. It was moved to strike.

Mr. Anthony: That is correct.

The Court: It was moved to strike the answer and the answer was ordered stricken.

Mr. Anthony: Yes, I understand. Maybe I'm a little dull this morning. I understood it was stricken, but for the purpose of Mr. Ennis to get in a proper objection so that the Court could then rule on it, I would like to be heard upon it before your Honor does rule upon it.

The Court: Very well.

Mr. Anthony: May I proceed?

The Court: Yes.

Mr. Anthony: One of the conditions which Mr. Ennis, [158] representing the Government, must comply with in order to maintain his position that Mr. Duncan may be tried in a provost court for a non-military offense is that the public safety requires the suspension of the privilege of the Writ of Habeas Corpus. That is one of the conditions that he must meet. Now, I propose to show by this line of evidence that the public safety may be adequately dealt with by means other than the suspension of the privilege of the Writ of Habeas Corpus and the trial of civilians in these military tribunals. I propose to show that we are a completely regimented community, that there are many other means of controlling the civil population other than the trial and conviction and sentencing of

(Testimony of Hon. Ingram M. Stainback.)
civilians in military tribunals. And on that issue I think the matter of the degree of regimentation, the degree of censorship, is relevant.

Mr. Ennis: If your Honor please, I still don't see the connection between censorship and trying the Petitioner in a provost court. And I don't believe that whether or not the public safety requires suspension of the privilege of the writ can be shown merely by indicating that in some respects unrelated to this case, namely, censorship, that some other means than censorship by the military, if it exists, could be adopted.

The Court: The order to strike stands.

Mr. Anthony: I'd like to make an offer of proof, if the Court please, at this time for the record. [159]

The Court: You may.

Mr. Anthony: I offer to prove that the Territory of Hawaii at this time is under complete censorship covering the mails, radio, telephone, inter-island telephone, and trans-Pacific telephone; that that censorship, so far as the mails are concerned, is a hundred percent censorship, and that intercepts are furnished regularly to the department of the Government in regard to the contents of the mails that are censored.

Mr. Ennis: I object to the proof being received in evidence, your Honor, as irrelevant to the issues.

The Court: The offer is denied.

Mr. Anthony: May we have an exception, your Honor?

The Court: Yes.

(Testimony of Hon. Ingram M. Stainback.)

By Mr. Anthony:

Q. Governor, have the departments of the Federal Government functioned according to law since the time you have been Chief Executive here—civil departments?

A. Yes, to the best of my knowledge.

Q. At any time have you observed any public disorder or commotion or civil strife in this Territory?

A. No, there has been none except as you may refer to the ordinary disorders of peacetime: fights and drunkenness and matters of that sort. There have been no riots or rebellions or anything of that sort. We have the ordinary difficulties that confront the Government in ordinary times [160] of peace, possibly exaggerated a little by a large increase in population.

Q. Have you ever conferred with any of the Commanding Generals of this Territory in regard to the necessity for the continuance of martial law?

A. Yes.

Q. With whom did you confer?

A. General Richardson.

Q. Will you please tell the Court what the substance of that conference was?

A. Well, the first time that you might say I had a formal discussion with him was—I don't remember the date but it was quite some months ago at the General's quarters in Shafter. He invited me out to lunch. I had several questions, including the matter of abolishing martial law entirely. I dis-

(Testimony of Hon. Ingram M. Stainback.)

cussed it in rather general terms, and I believe I left him a memorandum at that time and told him that I'd like for him to consider it. I pointed out that practically 95 percent of the civil government had already been restored, that such other powers as were being exercised here under the so-called military government or martial law could be accomplished in a legal way under the Act of Congress giving the President special powers to declare certain areas defense areas, and orders could be made under the authority of the President, such as prohibiting people or aliens or others from certain areas, and curfew and blackout and various things of that [161] sort; that this power had been sustained by the Supreme Court of the United States in the case of *Hirabayashi*—or maybe I'm a little off there—

Q. *Hirabayashi*. A. What's the name?

Q. *Hirabayashi*.

A. I found, for my own protection as well as for the benefit of the community and protection of officers who were enforcing these laws, that my mind was in a much better way to operate and accomplish everything that he was trying to accomplish now if we proceeded in the Federal Court with the backing of Congress rather than with a vague idea of martial law. The General was very nice and said he would take up that matter.

I again talked about it on January 14th. The General was over to my house for lunch. At that time that came up mainly through his request to

(Testimony of Hon. Ingram M. Stainback.)

use the Territorial Board of Pardons and Pardon on men who had been committed to the Territorial prisons by the military courts. I raised quite a number of questions which I submitted to you before you left the office. I don't believe you answered, so I worked out some answers of my own and gave the General a little memorandum at that time on the question of whether there had been any legal convictions. I said this question will have to be faced some time; we just can't keep people down; some of them have been sentenced for life and some for five years; [162] and the quicker we can raise the question and dispose of it, the better it would be for everybody concerned. The question would be raised some time. And I left the little memorandum with the General and told him I didn't expect him to answer it then but I'd like for him to consider it and go into it. He was very polite and nice and agreeable but I have had no answer on that question.

He did raise then the question of the labor control, and I hadn't discussed control of labor in my agenda, as to what could be done under this Act of Congress. And he said that was one of the most important reasons, I think, to continue martial law, the important reason. I couldn't tell the Court the exact words. There has been adequate control of labor by the War Manpower Commission here, and I felt all along and expressed my opinion that time, that you can't control the water in one half of the barrel by one bunch and the other half by the other.

(Testimony of Hon. Ingram M. Stainback.)

But I believe he stated that possibly some way could be worked out whereby they would give up this control of labor. Of course, under the proclamation labor control was divided. That was one of the matters that was taken up in Washington. The Army was given the control of public utilities' laborers, the dock laborers, on Army and Navy contracts. And he felt that was vitally important to the war effort.

Q. Governor, there has been attached to the return and answer in this cause affidavits by Admiral Nimitz and by [163] General Richardson. Have you examined those affidavits?

A. I have, not too carefully, but I examined them.

Q. Is there anything in your testimony that is inconsistent with the affidavits, in your opinion?

Mr. Ennis: Objection, your Honor, on the grounds that a comparison of the testimony and the affidavits is the proper way to determine that question and not the witness' recollection at this time of both his testimony and the affidavits.

The Court: Sustained.

Mr. Anthony: You may cross examine.

Cross-Examination

By Mr. Ennis:

Q. Governor, on December 7, 1941, you were a Federal Judge of this District? A. I was.

Q. You observed on that day either any of the enemy action in the Territory or any of the results of that enemy action?

(Testimony of Hon. Ingram M. Stainback.)

A. I did. I happened to be in my courtroom over there and came down on a Sunday to do some special work, so I heard the various explosions around about. I went back home about as fast as I could go and got in my car and took my binoculars and went up on the hill towards Kaimuki way to watch Pearl Harbor. I don't know whether I saw much of the enemy action. I could see huge clouds of smoke which I thought were coming [164] from the Dohaney tanks. I didn't know they were coming from our warships. I saw some of the planes. People were all ordered off the streets, and I went back to my home in Kahala at that time. I did see some of the planes.

Q. Some of the enemy planes?

A. Well, it was rather difficult to tell which were enemy and which were ours. I saw some dog fights over toward Koko Head—it looked like it—but it was rather difficult to insure who was who and what was what and what was happening. I can't say that I could give any detailed account of it. Of course, we listened to the radio. I did see some of the results of the fire out here, McCully way.

Q. Did you see subsequently some of the damage that was done in Pearl Harbor?

A. Yes, I saw the ships and the others. I didn't go into Pearl Harbor but it was very apparent as you passed by, the Arizona and the Oklahoma and the various ships that had been sunk.

(Testimony of Hon. Ingram M. Stainback.)

Q. From your observations, did the military forces of the Empire of Japan invade the Territory of Hawaii on that day?

A. I would say they attacked us from the air. My terminology of invasion is to enter into the country, to take possession or to loot it. They certainly were very successful in their attack.

Q. Well, would you state that that attack, Governor, [165] did not constitute an invasion of the Territory?

Mr. Anthony: I object to that as a question of law.

The Court: Sustained.

Mr. Ennis: If the Court please, I have no further cross examination of the Governor, but if the Court would permit I would like to make the Governor our witness on a separate subject and ask him a few questions in order to prevent recalling the Governor.

The Court: You may do so. Is there any objection to the Respondent at this time making the Governor their witness?

Mr. Anthony: None whatsoever.

The Court: All right. You may proceed, then, upon that understanding, that the Governor is now your witness.

HON. INGRAM M. STAINBACK,

Governor of the Territory of Hawaii, being previously sworn, testified for the Respondent as follows:

Direct Examination

By Mr. Ennis:

Q. Governor, annexed to the return and answer are copies of your proclamation of February 8, 1943, and copies of correspondence between the Secretary of War, the Attorney General, the Secretary of the Interior, and the President of the United States. Are you familiar with that correspondence?

A. I am.

Mr. Ennis: May I have these documents on which the [166] cover sheet is dated March 31, 1944, marked for identification?

The Clerk: Respondent's Exhibit No. 5 for identification.

The Court: The Clerk will mark it for identification.

(Received and marked for identification Respondent's Exhibit No. 5.)

By Mr. Ennis:

Q. I show you Respondent's Exhibit 5 for identification, consisting of photostatic copies of draft of letter from the three cabinet members I just mentioned to the President, containing initials of the officials in the three departments interested, Interior, Justice and War, and annexed thereto a copy of the proposed proclamation of the Governor. Will you examine those photostats and

(Testimony of Hon. Ingram M. Stainback.)

state whether, according to your recollection, they appear to be correct copies of that draft initialed by the officers? (Handing witness photostats.)

A. Yes, that seems to be a copy and that is the photostatic copy of my signature.

Q. That's a photostatic copy of your signature?

A. Under the word "approved."

Q. Yes. Do you recall the occasion upon which those other signatures were affixed to the original of this photostat, Governor?

A. In general, yes. In all this discussion it was emphasized by the War, the Attorney General, and the Interior, that this matter should be settled without going to the President. He had burdens enough without taking up these other troubles.

[167]

So I think every department exerted every effort to arrive at an amicable settlement that would in substance restore civil authority as much as we could get and also satisfy the War Department. So we reached a tentative agreement which is contained in the proclamation that is attached here, whereby most of the civil authority would be given to the civil Government, but certain authority, which is mentioned in the proclamation, would be retained by the military authorities. They thought it would be a good idea to have that approved by the President. So these letters were drafted with that idea in mind, and both myself—and I don't know whether I can read this signature—and Mr. Fortas—

(Testimony of Hon. Ingram M. Stainback.)

Q. He's the Under-Secretary of the Department of the Interior.

A. —McCloy, I assume.

Q. John J. McCloy, the Assistant Secretary of War, Warner Gardner.

A. Solicitor of the Interior Department.

Q. And General Emmons?

A. And General Emmons signed this approval on the formal letter. I only examined the first. Maybe I had better look at the others.

Q. Yes, if you will, Governor.

A. This is from the President, the second letter in the exhibit is from the President and addressed to the Secretary of War, and was also signed by me, and the other is approved. [168]

Q. That's an agreed draft which was submitted to the President?

A. Yes, submitted to the President.

Q. And the next, the third document, appears to be a photostat of the proposed proclamation by the Governor?

A. Yes. That was agreed to, but I have in my notes on here "substitute page 3 of the Army proclamation." Apparently there is some change on page three of the original draft. I don't know what it was.

Q. Well, I think for the present purposes, Governor, that it would be sufficient if you would state if that is one draft of the proclamation?

A. That is a draft.

(Testimony of Hon. Ingram M. Stainback.)

Q. Which also contains the signatures you mentioned?

A. Yes, the approval of the signatures mentioned.

Q. By comparison in the record we'll be able to work out the final proclamation.

A. Page three was changed.

Q. But it will appear in the final proclamation?

A. Page three was changed in both proclamations, both mine and the General's. I've got on mine "January 18, Mr. Gardner said 'substitute page 3 of the Governor's proclamation'."

Mr. Ennis: I request that this be marked as Respondent's Exhibit 6 for identification, these several documents under a seal and certificate of C. Ingling, Chief of Files of the White House. [169]

The Court: It may be marked for identification.

(Received and marked Respondent's Exhibit No. 6 for identification.)

By Mr. Ennis:

Q. Governor, I request you to examine Respondent's Exhibit 6 for identification, which purports to be photostats of a letter dated February 1st, 1943, to Secretary Stimson from the President, but bearing a typewritten signature, and a letter of January 18th, 1943, photostat of a letter, bearing the actual signature, photostat of the signature of the Secretary of War, the Attorney General, and the Secretary of the Interior. Will you examine the letter of January 18th and state, according to your recollection, whether that appears to be a

(Testimony of Hon. Ingram M. Stainback.)

photostat of the letter from the three members of the cabinet to the President, enclosing a copy of your proposed proclamation of February 8th?

A. That is the same as the copy that I have, excepting that the copy that I have does not bear the signature of the Secretary of War, the Attorney General, nor the Secretary of the Interior.

Q. But the text is the same?

A. The text is the same as the one in my files, but it does not bear the signatures.

Mr. Ennis: I request that this be marked as Respondent's Exhibit 7 for identification.

The Court: It may be marked for identification. [170]

Mr. Ennis: This is a document dated March 22, 1944, and affixed thereto by seal, a photostat of a letter dated February 1, 1943, bearing the photostat of the signature of the President to a letter to Secretary Stimson.

(Received and marked Respondent's Exhibit 7 for identification.)

Q. Governor, I request you to examine Respondent's Exhibit 7 for identification, and will you state whether that appears to be a photostat of the letter from the President to Secretary Stimson but bearing a photostat of the President's signature? (Holding witness the exhibit.)

Mr. Anthony: I might state, if the Court please, that there is no issue about this. There is no issue about the execution and delivery of these documents except an issue of relevancy.

(Testimony of Hon. Ingram M. Stainback.)

The Witness: This is the same as the letter in my file and bears the photographic copy of the signature of the President, and the letter in my file does not bear the signature of the President.

Mr. Ennis: I request that this be marked as Government's Exhibit 8 for identification, an agreed draft, photostat of agreed draft of a letter from the Governor of Hawaii, dated January 18, 1943, to General Emmons, under a certification of the War Department dated March 31, 1944. (Handing a photostat to the Court.)

The Court: Let it be marked for identification.

[171]

(Received and marked Respondent's Exhibit 8 for identification.)

Q. Governor, I request you to examine Respondent's Exhibit 8 for identification and state whether or not it is a photostat of a letter from the Governor, yourself, to General Emmons, bearing under the word "approved" your signature and the signature of the other officials of the departments which appear in the other letters.

A. This is the photostat of the agreed draft that was arrived at in Washington. The letter was not written until I came back to Honolulu, and at the time I believed General Emmons had left quite some time prior to my leaving Washington.

Q. Was the letter, in this form sent to either General Emmons or his successor in office?

A. It was sent to General Emmons.

Q. It was? A. Yes.

(Testimony of Hon. Ingram M. Stainback.)

Q. In this form?

A. Yes. I am not quite sure; I have nothing but the draft, but I am quite sure that such a letter was sent.

Mr. Ennis: If the Court please, a word of explanation. The opposing Counsel had not questioned the authenticity or the correctness of the copies of these original documents which are annexed to the answer and response, but I have marked these for identification and ask the Governor about [172] them because there are two purposes to be served: one, to prove the documents, which there is no objection to, and also to indicate by the signatures on the agreed draft that the three departments and the Governor worked on this problem and came to an agreement which is disclosed by their signatures on the drafts, which of course do not appear on the final letters.

Q. Now, Governor, are these documents the evidence of your consultations in Washington which culminated in your proclamation of February 8, 1943?

A. That is evidence of our agreement, yes.

Q. And they are an accurate statement of your agreement?

A. That is correct. Like all agreements, I might say that it is more or less of a compromise agreement.

Q. But they do express the sense of the agreement which was reached?

A. That is true.

Mr. Ennis: At this time, your Honor, I would

(Testimony of Hon. Ingram M. Stainback.)

like to offer in evidence Respondents' Exhibits 5, 6, 7 and 8.

The Court: Let me know the particular thing in the documents that you want to call the Court's attention to.

Mr. Ennis: I would like to call the Court's attention to the drafts of the letter from the three members of the cabinet to the President, initialed by the officials concerned, and the draft of the President's reply, initialed by them, to prove to the Court that it was the intention and the agreement [173] of the Government departments concerned that the resulting proclamation of February 8, 1943, should, so far as the law permitted and so far as their intentions could accomplish, accomplish the continued suspension of the privilege of the writ and the continuation of martial law.

The final exchange between the three cabinet members and the President, which are not initialed, I offer as additional evidence of the intentions of the public officials concerned as to the meaning of the language of the proclamation itself, if there is any question about the language.

The Court: Do these documents which you have and offer to put in evidence contain a copy of the proclamation that was actually issued?

Mr. Ennis: Yes, your Honor, there is annexed to the letter sent to the President a copy of the proclamation in the form in which it was issued.

The Court: Is there any objection?

Mr. Anthony: I have no objection to the au-

(Testimony of Hon. Ingram M. Stainback.)

thenticity of the letters, your Honor, and I have no objection to the documents going in evidence, preserving the right to argue as to the relevance and the construction of this proclamation. This proclamation, like any other written instrument, shall be interpreted by the instrument itself. And whether or not martial law exists does not depend upon the proclamation, as Counsel knows. With that statement, I have no objection to them going in evidence. [174]

The Court: The several exhibits offered are received in evidence as Respondent's Exhibit 5, marked 5-1, 5-2, etc. How many are there?

The Clerk: Four, your Honor.

(Respondent's Exhibit 5-1, 5-2, 5-3, and 5-4 received in evidence.)

[Respondent's Exhibit Nos. 5-1, 5-2, 5-3, 5-4, are set out in full as Respondent's Exhibits Nos. 2-1, 2-2, 2-3 and 2-4, starting at page 486 of this printed record.]

By Mr. Ennis:

Q. Governor, in connection with your proclamation of February 8, 1943, is it your understanding of the language you used that it was to continue the suspension of the privilege of the writ so far as the officials concerned could do that under the law?

Mr. Anthony: Same objection, your Honor.

The Court: Read that question, Mr. Reporter.

(The Reporter read the question.)

Mr. Anthony: May I state to your Honor, I have no objection to the witness answering the

(Testimony of Hon. Ingram M. Stainback.)

question so long as it is perfectly understood that this is a question of law for this Court. That is the meaning of the proclamation; that we are at liberty to address your Honor as to what the proclamation means.

The Witness: Shall I answer that?

The Court: Overruled. You may answer.

The Witness: There is no question, we intended to continue to suspend the writ of Habeas Corpus for the time being. Naturally, I didn't expect to continue it indefinitely, because [175] in the statement of the General at that time he said they would gradually relinquish civil control as it could be taken up; but as far as the proclamation was concerned, there is no question as to what was in our minds at that time. Whether he expressed it artistically or purposely, I presume it is a question for the Court. But as far as my own question was concerned, we intended to keep the right suspended.

Q. And at the time you issued your proclamation, Governor, you made a public statement to that effect? A. Yes, I think I did.

Mr. Ennis: Your Honor, that is all the examination I have of the Governor as the Respondent's witness. But I would for a moment like to go back to one question on the cross-examination, with your Honor's permission, unless Counsel has some cross-examination on this phase of the case.

The Court: You may do that, but before you leave this subject I want to get my mind clear as to what happened. I haven't examined these docu-

(Testimony of Hon. Ingram M. Stainback.)

ments that were put in. I had no opportunity to do so. I have heard a statement of Counsel as to what they contained in substance. As I get it, Governor, in Washington you conferred with executives of the National Government, department heads of the Interior, officials at least of the Interior and the Department of Justice and War as to the subject of martial law and the suspension of the Writ of Habeas Corpus here.

The Witness: Yes, your Honor. [176]

The Court: And after discussions you were not altogether in accord but you did come to an agreement, an understanding, a workable agreement, as you believed, and that was largely for the purpose of obviating the need of carrying the matter to the President for settlement, is that correct?

The Witness: That is true. Maybe I had better go back a little bit. I went back to Washington definitely for the purpose of obtaining the revocation of martial law. Under the Organic Act, the Governor declares martial law, but it contains approval of the President. I don't know what the law is on revocation, but I assume it is the same way; the Governor revokes it with the approval of the President. So my purpose in going to Washington—in fact, the matter had been discussed before my appointment as Governor—and I went back to obtain the revocation of martial law. I obtained part of it but not all of it. And this was a matter that they did not want to take to the President. All departments felt that he was heavily burdened

(Testimony of Hon. Ingram M. Stainback.)

at that time, and I think it was just before he went to Africa—I am not sure—but they didn't want to take departmental matters to him, and that they should be settled by the various departments.

This is the best settlement I could get, and I believe the Justice Department was aiding and abetting me at that time instead of the General. The War Department was adamant and they would not yield further than they did yield.

The Court: The War Department wanted martial law and [177] the suspension of the writ to prevail?

The Witness: That's right.

The Court: The Department of the Interior, what was their position?

The Witness: They wanted to revoke martial law entirely. Mr. Ickes was rather emphatic, although he didn't continue in many of the conferences, mostly the Attorney General and myself and Mr. McCloy.

The Court: The Department of Justice was neutral?

The Witness: The Department of Justice, as I take it, were very much in favor of me, that is, I say "me" in my position, and expressed it rather forcefully in several of the meetings but apparently they couldn't persuade the War Department.

The Court: You had several discussions?

The Witness: Oh, we went from early in December until, I think—this is dated the 20th of January (referring to notes)—and almost daily

(Testimony of Hon. Ingram M. Stainback.)

discussions, quite drawn-out. And after we had arrived at one settlement—not a settlement but a tentative agreement—then apparently this labor problem came up. And General Emmons returned to Hawaii and we had to go through the cable off and on as to what the General approved, and that took most of January, very extended discussions, very long, drawn-out, and I think everybody kept their temper more or less and discussed it good-naturedly with the idea of solving a very difficult problem. [178]

The Court: Well, the difficult problem was an economic problem here, as to labor?

The Witness: I say difficult problem, the difficulty was the stand of the War Department, and, as I understand, also the Navy Department, although the Navy Department took no part in these negotiations at all. But I think the War Department ascertained the wishes of the Navy Department. I understand they were very strongly of the opinion that labor should be controlled by the War Department or by the military, I should say, and that martial law should be continued in some form. In fact, I am quite sure the Navy Department was very much of that opinion.

The Court: Well, as a matter of practical experience and convenience, is that it?

The Witness: To a large extent. And the matter of facing conditions here and adjusting ourselves here to conditions after having been under military government for a year, the question of

(Testimony of Hon. Ingram M. Stainbaek.)
upset of economic conditions of the Territory had to be very carefully looked into, and a great many matters of that sort. We didn't want to throw a monkey wrench into the existing set-up and disorganize the Territorial economic condition any worse than that.

The Court: Well, during these discussions was the matter of the Constitutional provision that the Writ of Habeas Corpus shall not be suspended except during times of rebellion or invasion considered and discussed? [179]

The Witness: I don't think we went into any particular discussion of the legal end. It was a question of arriving at a practical settlement of an existing condition, and there was not much discussion of the law except at the first meeting, I think, the Attorney General gave his opinion on the law, on some phases of it. But after that it was mostly this question of what the War Department deemed absolutely necessary for the protection of the islands. I'll put it that way rather than the question of legality or matters of that sort; very little, in fact I think there was no discussion of law after the first meeting.

The Court: Well, was there any understanding as to how long that agreed arrangement should continue?

The Witness: Well, the very emphatic statement was made by General Emmons that he didn't want to exercise any civil powers and he certainly would get rid of all of it as quickly as he could with safety

(Testimony of Hon. Ingram M. Stainback.)

to the community, and we were all rather under the impression that very shortly the whole setup would be abandoned—at least I was. I don't know what the impression of the Attorney General was, and others. Direct reference was made to part of that, that they would give it up later, that is, the term Military Governor. And the Attorney General pointed out in the first meeting that there was no such thing in an American community, no such thing as Constitutional Government that applied to belligerent government. [180]

There was some statement made after we agreed. General Emmons wanted to retain that title for some reason or another for awhile. I opposed that because I said that Hawaii was an integral part of the United States and shouldn't be treated like a conquered country or a country in rebellion. The Attorney General argued with me and said: "What do you care what it calls itself?" Well, I said: "As long as the President doesn't recognize it, there is no official recognition; he can call himself Emperor Jones, as far as he wishes, as far as I'm concerned." So you will note in the letter the President addresses him as "Commanding General."

That's the only thing where they said it would be definitely dropped in a short time. The others would be dropped as quickly as it could be with safety to the Territory.

The Court: This proclamation that you promulgated on February 8, 1943, did you draw that or did your Attorney General draw it?

(Testimony of Hon. Ingram M. Stainback.)

The Witness: That was a proclamation that was agreed to in Washington, drawn mostly by Mr. Gardner of the Solicitor's Department and Mr. McCloy, I think, of the War Department; a good many others sitting in from time to time, but as draftsmen, I believe they were. Probably some attorney knew more about it, but I don't know whether Mr. McCloy attended all of the conferences. Mr. Gardner, when the proclamation began to take final form, was the chief draftsman at that time. So that was all agreed upon before I came back. I simply copied [181] the agreed form after my return to the Territory.

The Court: You brought the proclamation back with you?

The Witness: Yes, a draft of it.

The Court: How much time had elapsed between the time when you were holding these conferences and joined in the departmental agreement there before the proclamation was issued?

The Witness: I left Washington in the latter part of January. I think these letters were dated the 18th or 20th. The proclamation was issued soon after my return, on the 8th of February, I believe, is the date of it.

The Court: That's all.

Mr. Ennis: I have nothing more on this phase of the Governor's testimony.

The Court: Now, there were one or two questions that you wanted to revert to.

(Testimony of Hon. Ingram M. Stainback.)

Mr. Ennis: Yes, unless you have some cross-examination on this phase.

Mr. Anthony: I'll take my redirect and cross at the same time. Go ahead.

HON. INGRAM M. STAINBACK,

Governor of the Territory of Hawaii, being previously sworn, testified for the Petitioner as follows:

Cross-Examination

(Continued)

By Mr. Ennis:

Q. Governor, on your direct examination by Mr. Anthony [182] you testified that it was your opinion that there was no danger of invasion, imminent danger of invasion at this time?

A. That is correct.

Mr. Ennis: Now, at this time, with your Honor's permission I would like to repeat my question and request that the witness be allowed to answer the question as to whether, in his opinion, there was an invasion on December 7, 1941. Now, your Honor has already sustained an objection to that question, but I would like to make the point that the witness be allowed to testify as to his opinion as to the present time.

The Court: Yes, all right, you may ask that question.

The Witness: I don't think there is any comparison between December 7, 1941, and the present.

(Testimony of Hon. Ingram M. Stainback.)

I talked to a great many officers, Army, Navy and Marine, a great many.

Q. I understand, Governor.

A. May I finish my answer in this way? At the present time I know there are certain submarines in these waters here to seek information.

Q. Well, now, Governor, I don't wish to interrupt you but I do think, your Honor, that the particular question is whether or not in the Governor's opinion—and he has told us what he has observed on December 7th—whether or not there was an invasion on that day? And if I may, I'd like to have that particular question answered. [188]

The Court: That largely runs to the question as to what the Governor considers the meaning of the term invasion. He has used that term in saying that he was quite sure there was no imminent danger of invasion now. And you are asking him if there was an invasion of the islands on December 7, 1941. I think the question is fair. You may answer.

A. I have talked to and I do not disagree with the Admiral and the General. Of course, you can take out the weasel words. I think what they mean is that we have submarines here.

Mr. Ennis: Well, your Honor, I object to what the Admiral's and General's views are. I think we ought to get an answer to the question of what the Governor's opinion is on whether or not there was an invasion on December 7th.

(Testimony of Hon. Ingram M. Stainback.)

A. I've got to explain that. Today there is no possibility of a repetition of December 7th.

Mr. Ennis: If your Honor please, I request that that answer be stricken as not responsive to the question of whether or not there was an invasion on December 7th.

The Court: I think the witness should be allowed to express it in his own way, to answer the question as to whether he considers there was an invasion on December 7th.

A. In comparing it with today, I have to take it today; today I understand air raids can be made.

Mr. Ennis: I renew my objection, your Honor; the answer is not responsive. [184]

The Court: It may be. If it isn't at the finish, we will entertain a motion to strike.

Mr. Ennis: I take exception, please.

A. But because of our complete protection by antiaircraft today, I think any expert will agree the planes will be kept at such a height—they can come in but they could not get any targets with any accuracy like they did on December 7th. So as far as I am concerned, you can consider December 7th invasion, and yet I still say there is no imminent danger of invasion today because they could not possibly have a repetition of coming right in on top of the targets with the planes that came in December 7th. Of course, we thought there was invasion on December 7th. There was a radio announcement that paratroopers were landing here, there, and everywhere else. But as to whether that consti-

(Testimony of Hon. Ingram M. Sfainback.)

tutes invasion, I don't think there could be any repetition of that, and I think any officer that knows anything about our air protection here will tell you that the planes might get in but they will be kept at such altitudes that they could not possibly deal with any accuracy on targets in the Territory. I have that on the very highest authorities from numerous sources.

So regardless of whether that was an invasion or not, I don't think that invasion could occur today. I don't know whether I am making myself clear but I've got to make that comparison to say now that I still maintain that there couldn't [185] possibly be any imminent danger of invasion today.

Q. Well, now, Governor, do I understand that your answer to my question is that there was an invasion on December 7, 1941?

A. I am not prepared to pass on the legality of whether the Court would hold that as invasion or not. My description of invasion is where troops land to take possession. And from that standpoint I don't think there is the slightest danger of invasion. I think that there possibly may be, from all the people that I talked to, a raid, that is, a bombing of this Territory. It could be done; they couldn't stop it; they do it in London, if they are willing to make the sacrifice. But they would be kept so high that there could be no accuracy of bombing, and probably most of the bombers would come to grief. I understand we are very heavily fortified here in that respect.

(Testimony of Hon. Ingram M. Stainback.)

Q. Well, of course, Governor, I understand your view as to the situation today. I appreciate that. But what I wanted, if I could get it, was an answer to the question of whether or not, in your view, there was an invasion on December 7, 1941?

A. I would say there was imminent danger of invasion at that time, and I would have certainly declared martial law. I wouldn't think it would be necessary to pass on the legal problem whether there was a technical invasion or not. [186]

Q. Well, apart from the legal problem, which I am sure the Court will deal with adequately—the statute, Section 67, uses the words “invasion or imminent danger thereof”—now, couldn't you express an opinion as to whether what you observed—

A. I would request the Attorney General to express an opinion on the legality, but I certainly would declare martial law on the prime situation that we had imminent danger there. I wouldn't argue on the question of splitting hair as to whether we were invaded or not.

Q. Well, Governor, I don't ask you for a legal opinion.

A. I was not Governor at that time and I did not in any pass on the question. If it would come before me in Court, I might have passed on it, but I hadn't taken testimony. But I would sustain it if I had been Governor, I would sustain it on the question of imminent danger.

Q. But on the question of invasion and imminent danger thereof, that is not only a legal question but

(Testimony of Hon. Ingram M. Stainback.)

in any community and to a Governor it is more vitally a factual question. Couldn't you answer from what you observed and from what you know, living in the community and being a Federal Judge, as to whether or not there appeared to be an invasion ~~on~~ December 7th?

A. It certainly appeared to be an invasion. And it happened. There is no question about that. We certainly acted on that assumption. [187]

Q. Wouldn't you say there was an invasion?

A. Actually it turned out there was no invasion but just the sinking of our fleet.

Mr. Ennis: That is all. Thank you.

Redirect Examination

By Mr. Anthony:

Q. Governor, your views as to the imminence of invasion and the requirement that the privilege of the Writ of Habeas Corpus be suspended, they have been the same for the year 1943 and the entire year 1944? A. Yes.

Q. In our direct examination by Mr. Ennis in regard to the proclamation, you made reference to relinquishment of civil authority. That was agreed upon and so expressed in the document?

A. Yes, it was agreed that gradually there would be relinquished civil authority to the civil government.

Q. From and on March 10, 1943, what has been the course of events?

A. Nothing has been relinquished as far as I

(Testimony of Hon. Ingram M. Stainback.)

know, and we have taken no action. I have conferred with General Richardson a couple of times to try to get a working agreement. I might state, your Honor, we haven't been having any fights over this situation. I don't want to appear—General Richardson and I are on the friendliest terms and I try to cooperate with him, [188] and I am sure he has tried to cooperate with me, and my suggestions in Government have been as much to aid him as to aid the people of the Territory. I'm probably put in a little false position here on some of these answers and questions.

Mr. Anuthony: No further questions.

Mr. Ennis: Well, I think perhaps I should state, as the Governor did, that my department, the Department of Justice, and the Attorney General, we want to make it perfectly clear that whatever our obligations are as an administrative department of the Government in helping work these things out administratively, of course my position here, as a representative of the Attorney General, is to defend any Federal Government officials who are sued by a private party; and with the Governor I merely wanted to bring out as clearly as I could the actual facts of the matter. And I think that the Governor will agree that the Department of Justice and the Department of the Interior work very closely together on these matters, and on administrative matters—we deal very closely on them. But when any Federal official is sued, indeed, if the Governor is sued in connection with some other aspects of

(Testimony of Hon. Ingram M. Stainback.)

this matter, we might very well in defending him take a position somewhat different from the position we now take. But we defend every department of the Government. I think in cross-examining the Governor that it is fair that I should state that on the record. I think the Governor understands that.

[189]

The Witness: I have no kick, Mr. Ennis. I'm glad to hear you defend me if I get in trouble.

The Court: I think that is all.

(Witness excused.)

The Court: We'll take a recess at this time.

(A recess was taken at 10:31 a. m.) [190]

J. FRANK WICKHEM,

Captain, U. S. Army, a witness in behalf of the Respondent, being duly sworn, testified as follows:

Direct Examination

By Mr. Ennis:

Q. Captain Wickhem, will you state your full name and your present occupation?

A. Frank Wickhem. I am a Captain in the Army of the United States.

Q. What is your present position, your present duties?

A. I am assigned to duty with the Office of the Military Governor, and as a part of those duties I have the duties of the Provost Court Commissioner for the Territory of Hawaii.

(Testimony of J. Frank Wickhem.)

Q. What did you do before you came into the Army and when did you come in?

A. I came in October 1st, 1942, and I was a practicing lawyer.

Q. Where?

A. At that time in Los Angeles, California.

Q. How long have you been admitted to the bar?

A. I have been admitted to the bar since 1927.

Q. In California?

A. No, I was first admitted to the bar in the State of Wisconsin, after having graduated from the University of Wisconsin; then in the State of South Dakota, where I practiced until 1939, and then in the State of California.

Q. What duties are assigned to you in connection with your [191] assignment to the Office of the Military Governor?

A. Particularly the duties of the Provost Court Commissioner.

Q. What are those duties?

A. The duties of the Provost Court Commissioner are to coordinate the courts, that is, to see that the various Provost Courts operate under the same policy, to recommend and to help establish policy, to watch questions of jurisdiction, as to whether or not the Provost Courts have jurisdiction of certain offenses or whether they shall go to civilian courts, and to make recommendations and to initiate policies for the operation of the courts.

Q. Will you state very briefly for the Court how the Provost Courts do operate?

(Testimony of J. Frank Wickhem.)

Mr. Anthony: I object to that as immaterial, your Honor. I don't see that that has any relevance.

Mr. Ennis: Well, if the Court please, Counsel is attacking the operation of the Provost Courts. It seems to me that it has some pertinence to the discussion to know just what its jurisdiction is and how the Court operates. I think the Court will be helped by having some presentation of what the Provost Courts are rather than considering the question of their operations in vacuo without any discussion by the persons who are running them.

Mr. Anthony: Does Counsel intend to review the entire history of the Provost Courts, the number of quarts of blood impounded and bonds and dollars and fines and things of that nature that have been imposed upon the community? I don't know. I'm willing to go into it if the Court feels that there is any relevance [192] in it. I don't see any relevance to it.

Mr. Ennis: I think that the present operation of the Courts, their methods of procedure, should be very briefly described in Court. I don't have in mind the statistics, the summary of all the fines that they imposed.

The Court: Well, it seems to me that the thing more pertinent is, Where did the Provost Courts come from, in what manner and by what authority were they created?—rather than just how they operate at the present time.

(Testimony of J. Frank Wickhem.)

Mr. Ennis: I'd be glad to have the witness explain that to the Court.

Q. Would you first explain, Captain Wickhem, upon what authority the Provost Courts operate here?

A. When martial law was declared in the Territory of Hawaii, one of the first general orders which was issued—I don't know which one it was, I think it was General Orders No. 2—established Provost Courts and established their jurisdiction, and then named the particular Judges who were to sit as Provost Courts. Now, my understanding as to the authority is the inherent right of an executor or a military commander to establish tribunals to enforce the general orders which are initiated under martial law.

Q. And at present the Provost Courts operate under such general orders? A. That's right.

Q. Will you now state very briefly—

The Court: May I stop you for a minute? Provost Courts are not any regular part of the Army organization, is that so? [193]

The Witness: Yes, they are, Judge. The Courts-Martial Manual, the Manual of Courts-Martial itself, in Article 15 of the Articles of War, recognizes the existence of Military Commissions in Provost Courts.

The Court: And just in those words, that is all?

The Witness: As to jurisdiction.

The Court: Without any definition as to what they are or how they are created, isn't that so?

(Testimony of J. Frank Wickhem.)

The Witness: Yes, to my knowledge that is the only reference in the Manual of Courts-Martial.

Mr. Anthony: That's all covered by their own rules, your Honor. It's very clearly covered in the official publications of the U. S. Army, in Field Manual 27-5 and also in The Rules of Winter Warfare.

The Court: They have been referred to but they haven't been put before the Court.

Mr. Anthony: Well, that is a matter of law, your Honor, which I can argue. I don't think that we need to take our law from the witness on the stand.

The Court: I understand that, but without a background as to what a Provost Court is or intends to be or thinks it is, it is certainly irrelevant just how it operates.

Mr. Ennis: — Well, your Honor, as I understand it, the witness has stated under what authority the Provost Courts here in Hawaii, which we are interested in, do operate. Now, I think the history [194] of the Provost Courts is probably a matter for legal argument. And I am sure the opposing Counsel will trace the history in his argument. But what I had in mind for Captain Wickhem to tell us is, how, in fact, the Provost Courts operate here.

The Court: The objection is overruled, subject to a motion to strike all this testimony.

Q. Will you state now, Captain Wickhem, briefly what procedure is used in the operation of the Provost Courts?

(Testimony of J. Frank Wickhem.)

A. Well, the Provost Courts, under the jurisdiction as now set out in General Orders No. 2; have certain specific portions of jurisdiction to operate in; that is, they enforce all of the General Orders. They have jurisdiction of the Armed Forces for traffic violations, either day or night; jurisdiction of all of the civilians only during hours of darkness and blackout. The actual operations of the Court, that is, the manner in which a violation is brought to the attention of the Court, is through three enforcing agencies: the Shore Patrol, the Military Police, and the Civil Police. If a violation occurs, a citation is given by one of those agencies to the violator and he is requested then to appear, or summoned to appear at the Police Station within 48 hours for booking.

The Court: What police station?

The Witness: Your Honor, either Honolulu, if the violation occurs in the vicinity of Honolulu, or if it is in the vicinity of Aiea or in the vicinity of Kaneohe Police Station—

The Court: Well, the City and County Police Station, the [195] Civil Police Station?

The Witness: Yes, the Civil Police Station. Upon his appearing and being booked, the charge, the information sheet, is sent over to the Provost Court. That's written up by the Civil Police Officers or by the Military Police or by the Shore Patrol, as the case may be, and then a charge is drawn. That charge is signed by the Prosecutor and its verification taken by an Army Officer, ordinarily the Judge. The defendant is brought into Court; he is arraigned; he is given the right to Counsel;

(Testimony of J. Frank Wickhem.)

he is informed that he has the right to the issuance of subpoena; he can bring his own witnesses, or, if they are not available that he has the process of the Government to bring his witnesses in for him. Then we proceed to the trial, if the defendant is ready for trial and he acknowledges being ready for trial. The rules of evidence are adhered to in a Provost Court. Incidentally, the men who are sitting as Judges in the Provost Courts at the present time, all of them in civil life were practicing lawyers with the exception of two, your Honor, one on the Island of Lanai and the other is Colonel Dupree, who is a regular Army Officer, but he has had experience in the Legal Department of the Army.

After the case is heard, the Court makes its decision. And after that decision is made, then the particular Judge who is hearing the case loses jurisdiction after that particular day. The record is sent to the Office of the Military Governor, where every case is given a review by officers in that department. Applications for clemency, in cases where the defendant feels [196] that the penalty has been excessive, can be addressed to the Military Governor or given consideration or acted upon in that department.

That briefly, Mr. Ennis, is the operation of the Courts.

Q. In connection with the reconsideration, or the review, rather, by the Office of the Military Governor, is it possible to obtain a new trial or is the redetermination made just there?

(Testimony of J. Frank Wickhem.)

A. It is possible to obtain a new trial to this extent, that it is my understanding that the Office of the Military Governor, in those cases, can cut any sentence or can remit any fine; it can do anything it wants to on its own motion, and to my knowledge that action has been taken in many cases.

The Court: And a new trial held?

The Witness: No, I don't recall that a new trial has been granted, but, on the other hand, I don't know of any instance where that has been asked for.

Q. You stated that jurisdiction over civilians on offenses after nightfall—you were referring to traffic offenses?

A. Yes, to traffic offenses. I noticed that omission.

Q. Do the Provost Courts prosecute any civilians on offenses not connected with blackout and similar military security regulations?

A. To my knowledge, all of the General Orders now in effect are essentially security regulations. And a civilian would be prosecuted for a violation.

Mr. Anthony: That is just his conclusion of the law; that is [197] all we are getting from this witness, your Honor.

The Witness: May I proceed?

The Court: Yes.

Mr. Anthony: What his understanding of the orders are, I think that I am competent to address the Court on that.

Mr. Ennis: I am asking the witness what the

(Testimony of J. Frank Wickhem.)

cases actually are that were prosecuted in the Provost Courts.

The Witness: Any violation of a General Order. And those are General Orders which are sometimes not connected with traffic or blackout.

Q. Have you prepared a summary of the kind of cases that now occur in the Provost Courts and the volume of business?

A. I have, for one month, at your instance, Mr. Ennis.

Q. Have you got that summary with you?

A. I have.

Q. Would you get it, Captain? For what month did you have it prepared?

A. The Month of February, 1944.

Q. And what are the statistics of the Provost Courts' activity for that month?

A. This, Mr. Ennis, is the Provost Court at Honolulu, just one Court; in that month there were 1,453 cases that came before the Court. Do you want to know the type of cases? I have them.

Q. Yes, generally.

A. For example, I will read them as they go. They are mostly speeding cases, blackout cases, those which are not speeding [198] are blackout; fraudulent entry into a military area, smoking aboard ship, failure to report military service, parking in a restricted waterfront area, making false statements, absenteeism.

Q. How many convictions?

A. Convictions: 819.

(Testimony of J. Frank Wickhem.)

Q. What other categories make up the 1,453?

A. Of those 1,453 that came before the Court—when I say “came before the Court” that isn’t quite a correct statement because of those there were 519 blackout forfeitures. There were 36 traffic forfeitures; 79 cases were dismissed.

Q. Explain what blackout and traffic forfeitures are?

A. Well, it is the policy of the Provost Court that for a first offender who is guilty of being out after curfew, he can put up \$5.00 and forfeit it without appearing in Court. If you are riding in a vehicle after curfew, if you put up \$10.00 you can forfeit a bail of \$10.00.

Q. Was this summary prepared under your direction as the Commissioner of the Provost Court?

A. It was.

Q. And it is an accurate summary and statistical survey of the business for the month of February, 1944?

A. To the best of my knowledge it is.

Mr. Ennis: I offer this in evidence, your Honor, as Government’s Exhibit 8, Respondent’s Exhibit 8.

The Clerk: Six.

Mr. Ennis: Oh, yes, six. [199]

The Court: That may be received in evidence as Exhibit six. That is what? What do you call it?

The Witness: It is a summary of the business that went through the Provost Court at Honolulu for the month of February, 1944.

(Testimony of J. Frank Wickhem.)

(Respondent's Exhibit "No. 6" was received in evidence.)

[Respondent's Exhibit No. 6 is set out in full as Respondent's Exhibit No. 3, starting at page 516 of this printed record.]

The Court: Is that the only month in which you kept such a record?

The Witness: The only month in which the figures were compiled, your Honor. The records are kept for every month.

The Court: How do those cases of traffic offenses get into that Court, the traffic violations and blackout violations?

The Witness: By citation by the Police Officers, your Honor.

The Court: What do you mean by "Police Officers?" It appears to me that there are two classes of police officers. We had a police officer on the stand here awhile ago, this morning, a civil policeman who had something to do with the arrest and presentation of the case before the Provost Court at Pearl City. That police officer apparently didn't belong to the regular Territorial or city and county police.

The Witness: That's true, your Honor. Inside the Pearl Harbor Navy Yard the civil police officers are the enforcing agency with the marines.

The Court: Well, then, you've got a kind of a provost marshal police force, haven't you?

The Witness: Yes, your Honor. [200]

The Court: Well, how many different varieties of police are there?

(Testimony of J. Frank Wickhem.)

The Witness: Well, as I said, in the City of Honolulu the enforcing agencies there, your Honor, are the Military Police, the Shore Patrol, and the Civilian Police of the City and County of Honolulu. The Civilian Police referred to in the Duncan case are those who operate, the Civil Service Police who operate only in the Pearl Harbor Navy Yard.

The Court: But the regular City and County Police Officers, when they get a traffic violation at any time, they route the case or someone routes it? Who does that? They do?

The Witness: That's done in the traffic division of the Police Department, Sergeant Camacho.

The Court: By what, by some military order?

The Witness: By the orders of his superior, the Chief of Police, your Honor.

The Court: The regular civil police officers make arrests for blackout violations?

The Witness: Yes, sir.

The Court: How does that get into the Provost Court?

The Witness: That goes to a different department in the receiving desk at the civil police department, and that in turn routes it to the Provost Court.

The Court: Not all cases, just some go here and some go there?

The Witness: All cases of traffic or blackout, your Honor, during the hours of blackout, go to the Provost Court. [201]

(Testimony of J. Frank Wickhem.)

The Court: Haven't some of those gone into the Magistrate Court?

The Witness: Not to my knowledge.

Mr. Ennis: That's all, Captain.

Cross-Examination

By Mr. Anthony:

Q. When did this system begin, this Commissioner of Provost Courts?

A. I don't know, Mr. Anthony, just when that General Order was initiated, but I know that it was in the General Orders at the time they were put out on March 10th.

Q. How long have you held this job of yours?

A. July 18, 1943.

Q. You said that you had available the statistics for the prior months?

A. That's right.

Q. I would like to have *you* statistics covering the entire period since the initiation of martial law, if you can produce those?

Mr. Ennis: I object to that, your Honor, on the grounds that it is not relevant to the issues here what the Provost Court did since the beginning of martial law, and I don't know whether such statistics are in form to put in. It seems to me it is asking for a great deal of work.

Mr. Anthony: He says they keep regular records. [202]

Mr. Ennis: But they have to be abstracted from the regular records.

The Witness: That's right. I frankly think it can be done but it will entail—

(Testimony of J. Frank Wickhem.)

Mr. Anthony: Yes.

The Court: Well, is it in a mass of other stuff that points it out?

Mr. Anthony: That's sewed up tight here, your Honor. I'll have to split it.

The Court: You mean that material that came in attached to the return?

Mr. Anthony: Yes, your Honor.

Mr. Ennis: Have you got a copy of it, Captain?

The Witness: Yes, I have.

Mr. Anthony: That's not been offered in evidence but by the traverse we have admitted the issuance of all of these General Orders, so in that sense it is before the Court.

Q. You stated, Captain Wickhem, that you made the policy of the Provost Courts?

A. No, I didn't intend to give that impression.

Q. Or you coordinated the policy?

A. That's right, when the policy is established, then I try to see that it is put into effect in each Court. [205]

Q. What is the policy of the Provost Court?

A. Well, in regard to procedure, for example—

Q. Well, what is it?

A. Do you want me to tell you every step? Well, one of the policies of the Provost Court—

Q. What I'm getting at is this, Captain. I won't refer to the policy of the Federal Court or any other Court that I have knowledge of. You have referred to the policy of the Provost Court. Now, I want to know what that policy is.

(Testimony of J. Frank Wickhem.)

A. All right. When I used the word, Mr. Anthony, I intended to take in not only procedure but also matters of practice; for example, clemency, things of that kind, clemency, the fact that it is the policy of the Court that anyone who feels that they should do so or feels that they should have some redress, make an application to the Military Governor to obtain that redress.

Q. Where do you find that in any order?

A. That's it; it's the practice; it's not in the General Orders.

The Court: Well, that's after and behind the Courts, some policy behind the Court, is that what you mean, some policy of some authority that is over, larger than the Court, that can, after the Court is through, dispense justice then according to its view?

The Witness: Well, sir, I consider that a part of procedure; that is, the cases are never completed until the Military Governor has reviewed them and has passed upon them and has passed upon [206] any application for clemency.

Q. Who makes this policy?

A. The Military Governor.

Q. You mean the Commanding General of the Hawaiian Department?

A. I think the Commanding General of the Hawaiian Department, to the best of my knowledge, confers with the official, meaning Colonel Morrison, and the policy is arrived at that way.

(Testimony of J. Frank Wickhem.)

Q. And General Richardson, so far as your system of Provost Courts is concerned, makes the policy of the Provost Courts?

A. I think General Richardson is familiar with the way the Courts operate, and that he has made any policy and has knowledge of any policy that is in existence now. That is only my own personal opinion.

Q. Well, then, you don't really know where this policy comes from?

A. Except that it comes from the Executive Office of the Military Governor.

Q. You referred to the Provost Courts having jurisdiction over civilians during blackout.

A. I referred merely to traffic cases.

Q. How about if there is an assault and battery case during blackout, it wouldn't come before your Court?

A. That's right, it would not.

Q. Who determines what Court a case will come before?

A. Well, as I explained to Judge Metzger, when the offense comes in it is routed over in the Police Department either to [207] the civilian court or into the Provost Court, and sometimes cases come over there where the facts will show that it was not maybe a blackout offense—it didn't occur during the blackout. Well, that comes to my desk and I send it back.

—The Court: Well, that is in Honolulu only?

The Witness: That's right, your Honor. And in the other outlying islands, why the Prosecutor and

(Testimony of J. Frank Wickhem.)

the Judge are instructed to see that every charge and every factual situation is such that it comes within the jurisdiction of the Court.

The Court: I didn't want to interrupt you.

Mr. Anthony: That's all right, your Honor.

The Court: May I ask, how do you get your convictions into the City and County Jail?

The Witness: Your Honor, if a sentence is pronounced, the Judge signs a committment just as he did in the present case.

The Court: Well, a committment in whose name, directed to whom?

The Witness: Directed to the Oahu Prison or the Warden of the Prison of the City and County Jail.

The Court: To any prison in the Territory?

The Witness: That's right, your Honor.

The Court: What authority does the custodian or jailer of these jails have to recognize and take into custody such prisoners?

The Witness: That is something that I can't answer, your Honor. I have been informed that there has been an order by one of the Commanding Generals—whether it was General Richardson or [208] probably his predecessor—ordering the various wardens or the jailers to take and keep in custody Provost Court prisoners.

The Court: Do you pay for their keep in the various prisons?

The Witness: To the best of my knowledge, your

(Testimony of J. Frank Wickhem.)

Honor, that arrangement is taken care of at the time that the amount collected by the Provost Court is turned over to the Territory. The Attorney General probably knows more about that than I.

The Court: The Territory is one thing, in a fiscal way, and the City and County is another. What about your local ones?

The Witness: I don't know about that, your Honor.

The Court: Well, how do you get them out of jail?

The Witness: At the time that their sentence is served, why they are released.

The Court: And not before?

The Witness: Unless they have been given clemency by the Office of the Military Governor.

The Court: Well, suppose they have been given clemency, how far could that clemency go, all the way to a pardon?

A. It would go all the way to a complete release, your Honor.

The Court: And how is that executed?

The Witness: And order is drawn in the Office of the Military Governor and it is taken down to the particular jail or prison where the particular individual is kept.

The Court: Well, these prisoners are sent to the jails by the Provost Court; and are they in a different class than those [209] sent in by the Courts of the Territory, the Magistrate Courts?

The Witness: I can't answer that definitely.

(Testimony of J. Frank Wickhem.)

your Honor, but it is my impression that they are just in the general run of prisoners in the County Jail.

The Court: This morning the witness for the Petitioner in this case came in here and said he was assigned to hard labor. I don't know whether the charge was really a misdemeanor or a felony charge, but it looked like a misdemeanor with all of the aspects presented here. Do your mittimuses provide for hard labor?

The Witness: It is within the General Order to sentence either with or without hard labor, but most of the sentences or the mittimuses do not read that way. I heard that testimony also and I don't know by whose authority he was given hard labor.

The Court: Well, it is designated on the mittimus whether the prisoner is to serve hard labor or not?

The Witness: To the best of my knowledge it is, your Honor.

The Court: Are you familiar with the form of the mittimus?

The Witness: Yes, your Honor.

The Court: I noticed that mittimus running in the name of the Territory. I believe it did, as I looked at it.

Mr. Anthony: Yes, it does.

The Court: Was I right?

Mr. Anthony: Yes, addressed to the high sheriff.

The Court: Well, I think that's all. I just wanted to get some facts.

(Testimony of J. Frank Wickhem.)

Mr. Anthony: Is your Honor finished with his examination? [210]

The Court: Yes.

By Mr. Anthony:

Q. Captain Wickhem, what law do you enforce in the Provost Court?

A. The orders of the Military Governor.

Q. How about traffic cases?

A. They are made in a particular order. We enforce the Territorial statutes in regard to traffic and also the City and County ordinances.

Q. Is that in the military orders? A. Yes.

Q. Which one?

A. It is my knowledge that it is in General Order 2, General Order 2, Mr. Anthony.

Q. What paragraph? A. Paragraph 3.01.

Q. And that says what, that you are authorized to enforce the laws of—

A. The Territory of Hawaii or any ordinance, resolution, by-law or regulation or rule of any city, city and county, or counties, and other municipal or subdivision of the Territory of Hawaii.

Q. That means authorized, the Provost Courts are authorized? A. That's right.

Q. There is nothing obligatory about it, however? A. No, that is true. [211]

Q. In other words, if they want to enforce the laws of the Territory in those Courts, the Judges will do it, and if they didn't want to they won't do it?

A. Well, they try to follow the General Orders.

(Testimony of J. Frank Wickhem.)

Q. Well, the General Orders just authorize the Courts to do it? A. That's right.

Q. Presumably the language means what the words say; all that does is give a discretion in that Judge, isn't that a fact?

A. Yes, that's right, that's the way it reads.

Q. Now, you take an Army or Navy Officer who is convicted of driving while drunk, either before or after blackout, would the Provost Court take his license away from him?

A. Yes, definitely.

Q. In every case?

A. Yes, we follow the same practice as the Territorial Courts.

Q. Are you sure about that, Captain Wickhem?

A. Mr. Anthony, I'm certain that every Court has been so instructed.

Q. But you are not certain about the fact?

A. I won't say that instances haven't occurred where the license has not been taken away, but if so, it has been by admission or failure of the Judge to follow the policy of the Court. Every case that I have on here, that I have sat on, or that I have witnessed, Mr. Anthony, since I have been here, they have taken the license away. [212]

Q. Are you familiar with Field Manual 27-5?

A. No, I am not.

Q. It has never come to your attention?

A. No, I know of it but I am not familiar with it.

(Testimony of J. Frank Wickhem.)

Q. Are you familiar with Field Manual 27-10, containing the rules of land warfare?

A. No, I am not.

Q. These are official documents of the U. S. Army. Just take a glance at them. (Handing witness two books.)

A. Any particular thing you want me to look at?

Q. The Military Government and Provost Courts. You don't purport to operate under either of these documents, do you? A. No.

Mr. Ennis: Objection, your Honor, on the grounds that it is calling for a legal conclusion. I think we should argue those matters out as a matter of law.

Mr. Anthony: Well, I just want to make sure that the witness has never even seen them. And he is the Provost Court Commissioner.

Q. You have never examined either one of these publications, that is true? A. That's true.

Q. Do you know whether anybody else in the Office of the Military Governor is familiar with these?

Mr. Ennis: Objections, your Honor.

The Court: Well, that question only goes as to whether he knows or not. [213]

A. I do not know, Mr. Anthony.

Q. Do you know what buildings the Provost Courts occupied in this Territory during the regime of martial law?

A. I know that they were in the City and County Building, the Police Station, the building where

(Testimony of J. Frank Wickhem.)

the Police Station was located prior to the time they moved across the way to the present building.

Q. Occupying the Courtroom of the District Magistrate of the City and County of Honolulu?

A. That's right.

Q. When did they move across the street into the Japanese bank?

A. I can't tell you that but I think it was some time in 1942. I can't tell you definitely.

Q. How about over in Hilo, where do they hold court?

A. They hold court in the District Court in Hilo, the District Courtroom.

Q. That's the District Magistrate's Court for the District of Hawaii?

A. That's right.

Q. Used by the Provost Court for the trial of Provost Court prisoners?

A. That's right.

Q. Provost Court cases? Most of them turn out to be prisoners, isn't that a fact?

A. No, that isn't true. [214]

Mr. Ennis: I object.

Q. Now, Captain, this review that you have talked about, that's not made public to any member of the public, is it?

A. No, it isn't.

Q. You have never seen that published any place that there is such a thing as a review?

A. No, I have never seen it published.

Q. It doesn't appear in any General Orders?

A. No, it does not.

Q. And it is a fair statement to say that whether or not a person can get a review or remission or

(Testimony of J! Frank Wickhem.)

discharge lies wholly within the discretion of the Office of the Military Governor?

A. That's a fair statement.

Mr. Anthony: That's all.

The Court: Do you mean to say that there is a review made in the absence of any application for a review?

The Witness: That's right, your Honor. Every case gets a review.

The Court: What's the purpose of that?

The Witness: So as to determine whether or not an injustice has been done in any way, shape or form; if the Court got out of line.

The Court: Who determines that, some superior judicial official that sits behind the Provost Courts?

The Witness: Well, it's reviewed by at least two officers, your Honor, and then it goes to Colonel Morrison. And I don't [215] know this, I don't know whether he takes those matter up with the General or not, but it is my impression that he definitely does.

The Court: All cases or just such class of cases like absenteeism and labor cases?

The Witness: Every case, your Honor, excepting bail forfeitures, I presume; as a matter of fact, every case that goes up there.

Mr. Anthony: Do you think that the Commanding General reviews these cases?

The Witness: No, I didn't say that. I think that in cases where there is any question about it, or where there is an outstanding situation, I

(Testimony of J. Frank Wickhem.)

think it is taken up with the Commanding General, but again I say that is my impression entirely. I know it is reviewed by two officers and finally goes to Colonel Morrison.

The Court: Suppose they concluded that too severe a fine has been assessed and collected, is anything done about that?

The Witness: Yes, your Honor, they either remit the fine in whole or in part or take whatever action there is. If it is an incarceration case, they take whatever action there is to remit a portion of that.

By Mr. Anthony:

Q. Have any fines ever been paid back?

A. Yes, I know of some down in the Provost Court.

Q. Provost Court?

A. That's right, where we found out the jurisdiction was wrong—fellows have been called in.

[216]

Q. That's what I'm talking about; that's just where you made a mistake?

A. That's right.

Q. Where the reviewing authority came to the conclusion that the fine was excessive, has there ever been a fine paid back?

A. If you are differentiating between a fine which has been paid and one which is not—

Q. That's right, after the money gets into the till?

A. I don't know of any. There may have been.

(Testimony of J. Frank Wickhem.)

The Court: Well, does every one of these Provost Courts throughout the Territory have an official reporter; a competent reporter?

The Witness: Yes, they do.

The Court: How long has that practice been established?

The Witness: Well, I can vouch for only one from the time that I have been there, and I visited every Court. I have seen every Court in operation with one exception, that is, the Court on the Island of Lanai, and I know that there has been a reporter present in each instance and I know they are so instructed.

The Court: They take all of the proceedings and all of the testimony?

The Witness: They don't take all the proceedings and all the testimony, your Honor. They take—if a case is contested, they take a contested case. If a case is a serious case, such as a drunken driving case or something of that nature, they take the testimony and preserve it, even though the plea is guilty. [217]

The Court: Well, if the plea was guilty, there wouldn't be any testimony?

The Witness: Yes, there is, your Honor. In the Provost Court, even though the plea is guilty, the Court is given not only the authorization but the direct order to determine whether or not the facts justify a finding of guilty, because sometimes a man inadvertently enters a plea of guilty when

(Testimony of J. Frank Wickhem.)

a set of circumstances show that in fact he wasn't guilty.

By Mr. Anthony:

Q. Where do you find that in the orders?

A. It is not in the General Orders but it is the practice, it is Courts-Martial practice and it is the practice that's been followed to my knowledge in the Provost Court.

Q. When did the Provost Courts start keeping records?

A. Well, I can't answer that, Mr. Anthony, because as I say—

—Q. Was it this year?

A. Oh, no, no, no, I can vouch for the fact that ever since I've been there that complete records have been kept and they were complete records when I came down there.

Q. When did you start that?

A. I didn't start it.

Q. When did you start at your job?

A. July 18, 1942—1943.

Q. 1943? A. That's right. [218]

Q. So at least since that time they have kept complete records? A. That's right.

Q. Are they public records?

A. They are certainly available.

Q. Now, don't equivocate, Captain.

Mr. Ennis: I object to that, your Honor. Let him be allowed to ask a question.

The Witness: May I answer?

The Court: Yes.

(Testimony of J. Frank Wickhem.)

The Witness: No, they aren't to this extent. If anyone is going to see the records down there, they have to get the permission of the Military Governor.

Mr. Anthony: In other words, members of the public can go down and as a matter of right examine the records of the Provost Court, is that a fact?

The Witness: That's right.

Mr. Ennis: I move that Counsel's remark about the witness equivocating before he started to answer the question be stricken.

Mr. Anthony: I have no objection to that being stricken.

The Court: Yes, that may be stricken.

Mr. Anthony: That's all.

Redirect Examination

By Mr. Ennis:

Q. Captain, you spoke of the policies adopted in the Provost Court and also of the review of these cases in the Office of the [219] Military Governor. As a result of the review of the cases, do you arrive at a certain coordination of the activity of the Provost Courts? A. That's right.

Q. Do you in that way make uniform their activity and do you reach policies of procedure?

A. That's right.

Q. Do you communicate—

The Court: You are coupling too many questions in one and getting one answer to the whole.

(Testimony of J. Frank Wickhem.)

I can't tell from the answer just which question he was answering to.

Q. Well, I'll try and break it up, your Honor. Do you, for example, in going over the fines for first offenses in a particular type of case examine the cases to see whether the Courts are more or less uniform in their treatment of that type of case?

A. That is exactly right. We want the Court sitting in Honolulu or the Court sitting in a comparable area some place else to treat the same offense in the same manner.

Q. Do you then, in the course of that review, form a policy in respect of the fine for a first offense for a particular type of case?

A. That's right.

Q. Do you communicate that policy to the Courts involved?

A. That is true. I have done it personally.

Q. And is that the kind of thing you mean when you speak of the policy of the Courts? [220]

A. That's it, exactly.

Q. Does the same kind of activity go on in respect to any remissions of fines or any suspensions of convictions?

A. That I can't answer, Mr. Ennis, as I don't take any part in that.

Q. You do not? A. No.

Mr. Ennis: That's all. Thank you.

(Testimony of J. Frank Wickhem.)

Recross Examination

By Mr. Anthony:

Q. This review, Captain, how does that work, is it automatic?

A. Every case is reviewed, Mr. Anthony, automatically as soon as it comes up there.

Q. Was Mr. Duncan's case reviewed?

A. Yes.

Q. That was after he filed his Petition?

A. I don't know when it was but I inquired as to whether or not the case has been reviewed and I know it has been.

Q. Was anybody called to present any views on the review other than the military authorities?

A. I don't know. Again I say I don't take any part in that procedure, so I don't know just what happened.

Q. Well, are the notes transcribed when a case is reviewed?

A. I don't know that. You see, when the Provost Court sends the record up to the Military Governor's Office, then it goes to the officer or officers—two of them—for review. But I take no [221] part in that at all.

Q. I know that, Captain, but as the Coordinator of the Provost Courts you know what the Courts do? A. That's right.

Q. Now, do the Courts actually transcribe their cases, their contested cases, and ship a lot of transcripts up for review?

(Testimony of J. Frank Wickhem.)

A. No, they do not. For example; all absenteeism cases, those records are kept and they are all requested when there is an application for clemency. But outside of that transcripts are not written up and sent up.

Q. How can a reviewing officer review a case when he doesn't know what was before the Court below?

A. Well, the only thing they can do is to look at the record insofar as the charge is concerned and the sentence.

Q. The pleadings? A. That's right.

Q. Then arrive at a conclusion whether or not justice was done? A. That's right.

Mr. Anthony: That's all.

The Court: This policy of getting the Provost Courts all on an equalized plane; so as to synchronize them as to punishment for given offenses under similar conditions, that is something you have originated?

The Witness: No, I haven't, Judge Metzger. I think Eddie Silva tried to do the same thing before me. [222]

The Court: That was to correct flagrant earlier abuses, was it?

The Witness: Well, it was to make the Courts operate in such a way so that the sentences meted out would be commensurate with the offenses.

The Court: Do you think you've got that pretty good?

The Witness: We have tried, your Honor.

(Testimony of J. Frank Wickhem.)

Q. Suppose along with that incident you have a case of criminal neglect resulting in homicide?

A. That would not be tried in a Provost Court.

Q. Where do you find that in the General Orders?

A. It is not in the General Orders; it is just a matter of interpretation.

Q. Now, in regard to the trial of civilians, what is the language in the Orders that gives the jurisdiction over to the Provost Courts for the trial of civilians?

A. The language in the General Orders is that any violation of General Orders during blackout, to try civilians for any violations of a General Order and for traffic offenses during blackout.

Q. Suppose the civilian is guilty of reckless and heedless driving during blackout?

A. He is tried in the Provost Court.

Q. Suppose along with that offense there is a resulting homicide during blackout, criminal neglect, where is he tried?

A. Well, it has never come up, Mr. Anthony, but I'd say offhand that he'd be tried in the civil courts.

Q. Is there anything in the orders that would give you any guide to that?

A. No, that's right, there isn't. [226]

Q. You've got to interpret the words "traffic offenses", is that right?

A. That's right.

Q. That may mean a felony and it may mean a mere misdemeanor?

A. That's right.

(Testimony of J. Frank Wickhem.)

Q. And it's your job to make that interpretation, is that right? A. I'd say, Yes.

Q. And you sort these cases out and some of them will go to your Courts and some will go to the Civil Courts? A. That's right.

Q. How about the crime of murder by a civilian during blackout? A. No.

Q. By "No" you mean that is not tried in the Provost Court?

A. That's right; it goes to Civil Courts.

Q. In other words, in order to get down in the Provost Court you've got to do one of two things, either violate a military order——

A. That's right.

Q. ——or do something in connection with traffic?

A. Or an order of a Military or Naval Commander.

Q. Yes. Those three things?

A. That's right.

Q. And whether or not you have committed any crime or offense that relates to traffic depends upon your determination? [227]

A. That's pretty generally true.

The Court: When was the Naval Commander brought in?

The Witness: In General Orders 2.

The Court: Two?

The Witness: Yes, your Honor.

The Court: Well, such orders of the Naval Com-

(Testimony of J. Frank Wickhem.)

mander, have they been published or otherwise promulgated to public notice?

The Witness: Yes, your Honor. That would be like a speed law on the Pearl Harbor Naval Reservation. Those orders are published and also the signs are up.

By Mr. Anthony:

Q. Captain Wickhem, the General Orders, are they published?

A. They have been published, Mr. Anthony, in the papers.

Q. Is there any authority for their publication that you know of?

A. No, I don't know that.

Q. Do you know whether or not the newspapers publish these without charge?

A. No, I don't know in regard to the compensation, Mr. Anthony. I know they did appear in the papers.

Q. That's a fact, is it not, that on many occasions they appear after they have been issued?

A. I think that it is released to the press simultaneous with its enactment, when it is released it is also given to the press immediately.

Q. Are you sure about that? [228]

A. Yes, I have been told that, Mr. Anthony.

Q. How many people are in the Office of the Military Governor?

Mr. Ennis: Objection, it is irrelevant.

Mr. Anthony: I don't think it is irrelevant at all. This is a new system of administration of jus-

(Testimony of J. Frank Wickhem.)

tice in Government, and I think we ought to have some facts about it.

Mr. Ennis: If the Court please, the Office of the Military Governor has a great many duties that are not related to the Provost Court system, I think.

The Court: Sustained.

By Mr. Anthony:

Q. How many Provost Judges do you have?

A. We have four on this island, and four on the other islands; eight. And then I think there are at least one or two more, Mr. Anthony, who are qualified to sit who are not sitting.

Q. These Judges have clerks?

The Court: What do you mean by "qualified"?

The Witness: I mean they have been appointed, that's right, they have just been appointed and named.

Q. Who appoints them?

A. The Military Governor.

Q. By that you mean General Richardson?

A. That's right, by General Order.

Q. And does he pass on the qualifications of these Judges?

A. I think that they are investigated very carefully, and [229] that Colonel Morrison reports to General Richardson the man that he intends to recommend, and General Richardson in a general way knows his qualifications, but I won't say that he knew them specifically.

Q. That is, the individuals are investigated by

(Testimony of J. Frank Wickhem.)

Colonel Morrison who in turn makes a report to the General?

A. That's right, and when I say Colonel Morrison, for example, I reported to Colonel Morrison about certain men, and he asked me about them, and I told him about their legal background, their duties in the Army and why I thought they'd be qualified to sit. And I'm not the only source of information; he gets information, the same information, from other sources.

Q. Prior to your appointment, was it the practice to have lawyers sitting on these Courts?

A. Yes.

Q. In a few instances?

A. Yes, Colonel Baroff was a practicing lawyer.

Q. He was a recent appointment, however, fairly recent?

A. Well, it was 1942, I think early in 1942, Mr. Anthony.

Q. Is it a fact that a large number of those Judges had no training in the law, isn't that a fair statement?

A. No, I don't think that is a fair statement. I think that most all of the judges who have sat in the Provost Courts had a legal background, Mr. Anthony. Now, since I've been down there there are only two, as I said yesterday, who are not lawyers in civil life. [230]

Q. How about these military commissions?

A. The military commissions?

Q. Yes.

A. I am not familiar with them.

(Testimony of J. Frank Wickhem.)

Q. Like that commission that tried Saffrey Brown—were there any lawyers on that Court?

A. I'm not familiar with that commission, Mr. Anthony.

Q. When did you take over your office?

A. July, 1943.

Q. 1943? A. That's right.

Q. And you don't know anything about the qualifications of the Judges before that, do you?

A. Yes, I do, because prior to that time, when I was in the Judge Advocate's Office at Shafter, I used to come down and sit on the bench.

Q. Do you remember Purcell, who used to sit down here? A. Not since I've been here.

Q. At Shafter, Major Purcell?

A. No, I don't recall any Purcell, not in 1942 or 1943, Mr. Anthony.

Mr. Anthony: That's all.

° Redirect Examination

By Mr. Ennis:

Q. Captain Wickhem, will you state the qualifications of some present Provost Court Judges?

[231]

A. Well, Lt. Col. Newkirk is the Provost Judge sitting in Honolulu. He is a practicing lawyer, admitted to the Supreme Court or to the state bar of Illinois, to the Federal District Court, I think it is the Southern District of Illinois. He is a member of a firm of lawyers in Illinois who have an "A" rating in Martindale's. He has been, I'd say, a practicing lawyer there for about 15 years.

(Testimony of J. Frank Wickhem.)

Lt. Col. Jones, who sits on the Island of Kauai, was just prior to his coming in to the Army—I think they referred to them as District Judges in Utah. It is the trial Court of Record. It would correspond to the Superior Court in California. He got his leave of ~~absence~~ from that judicial position to go into the Army. He is a man of some 48 years of age, I guess, and has been practicing law for—this is an estimate, your Honor—but I imagine some 20 years.

Frank Hustace, Captain Hustace, who sits in Hilo, is a graduate of the Harvard Law School. He has been a Deputy City and County Prosecutor in the City and County Attorney's Office of the City and County of Honolulu, and was very instrumental and helpful in formulating and compiling the present revised ordinances that are in use in this city.

Captain Rohrer is a man of about 45 years of age; just prior to coming into the Army he was a Deputy in the City Attorney's Office in the City of Los Angeles and has been practicing law. He is a graduate of the law school of the University of California, has been a practicing lawyer in the City of Los Angeles since [232] about 1928.

Colonel Du Pree is a regular Army Officer. He sits at Schofield, or rather I should say he sits at Pearl City. Now, his experience, I notice in his biography that he has acted in the Judge Advocate's Department in the Territory, was also an assistant Provost Judge in Germany during the time of the

(Testimony of J. Frank Wickhem.)

Occupation. Other than that, I don't believe he has any particular legal background.

The Judge on Lanai is a civilian, Mr. Carlson. Now, he has acted in that capacity ever since the blitz. I believe that the cases on Lanai won't run over—again this is an estimate—but I'd say 20 a month.

The other Provost Judge is Lieutenant Klatt, and he sits at the Kaneohe Air Station. He is a man about 48 years of age; he was admitted to practice in the State of Illinois and has practiced law in Illinois, in Peoria, Illinois, for a period of some 12 or 14 years prior to coming into the Army.

Of course, you have had an opportunity to see Judge Mundo on the stand and to get his—

Mr. Anthony: What do we have here, a general specification, your Honor? Of course, you had an opportunity, but I object to the witness—

The Witness: All right, the one—

Mr. Anthony: Just a minute. I object to the witness doing anything but answering questions.

The Witness: May I answer as to the last Provost Judge, [233] your Honor?

The Court: That's the one you are talking about—yes.

The Witness: Judge Mundo is the last one.

Mr. Ennis: We had his qualifications, yes.

The Witness: Yes, I just want to refer to the fact that he was the only one I omitted.

The Court: Judge Mundo is in Honolulu?

The Witness: Lt. Col. Newkirk sits in Honolulu.

(Testimony of J. Frank Wickhem.)

The Court: That's the one you didn't mention?

The Witness: No, I mentioned him as the first one.

By Mr. Ennis:

Q. Captain Wickhem, is it a fact that Paragraph 3.01 of General Orders 2, as it appears in this printed form which Counsel refers to, has since been amended to strike jurisdiction over civilians between the beginning of darkness, as defined in the regulation, and the beginning of blackout?

A. That's right.

Q. Will you explain that revision?

A. Traffic—after the amendment was made to paragraph 3.01, practically, the only offense by civilians during hours of darkness—that is, one half hour after sunset and prior to 10 o'clock, and from one half hour before sunrise or rather from 5:30 to one half hour before sunrise—during those hours the only traffic offenses that are left, as far as civilians are concerned are speeding and it used to be parking, and of course, parking now has been amended, and lights. Those were practically the only offenses left as far [234] as civilians are concerned.

Q. To be tried in the Provost Courts?

A. Yes, during those hours of darkness.

Mr. Anthony: There is nothing to prevent the Military Governor from getting out an order and making the crime of assault and battery triable in Provost Courts, is that right?

(Testimony of J. Frank Wickhem.)

Mr. Ennis: I object on the ground that it is a hypothetical question.

Mr. Anthony: Precisely, they get out an order—

Mr. Ennis: I object to Counsel testifying.

Mr. Anthony: I'm not testifying; I'm stating what is in this record. Every time the Office of the Military Governor gets out an order that's automatically triable in the Provost Court, and it may cover any subject that is contained in the order. That is a fact, is it not? Any military order can enlarge the offense beyond what now exists, at any time.

Mr. Ennis: I object on the ground that it is hypothetical and argumentative and asking for a legal conclusion.

The Court: Well, the witness has given his interpretation of the Governor's orders, and I think it is a fair enough question.

The Witness: They could.

Mr. Ennis: Exception.

The Witness: They could enlarge the jurisdiction. Mr. Anthony, although there has been an agreement as to the division of powers in compliance with the proclamation of March 10, and there has always been rigid adherence to that. And I would doubt if there [235] would be any general order which would violate that division of authority.

By Mr. Anthony:

Q. I believe that you said that the Territorial

(Testimony of J. Frank Wickhem.)

law in general was followed in regard to punishment?

A. There is a general order which says that the punishment shall be commensurate with the offense, and also the General Orders say that on the whole the Territorial law will be used as a guide.

Q. Guide? A. That's right.

Q. The Provost Courts are not limited to the punishment prescribed in any written law?

A. No, they are not, Mr. Anthony.

Q. Can you explain to the Court how it was that the Petitioner in this case was given hard labor?

A. How it was he was given hard labor?

Q. Yes.

A. Not in the mittimus. It says nothing about that. No, I can't explain that.

Q. That was just an error, was it?

A. Well, I won't say that. I don't know anything about the facts in that particular situation. I know of it.

Q. You are the Commissioner?

A. I know it does not prescribe hard labor.

Q. That's right. And under your system you are supposed to say in the mittimus whether or not the man is to be confined [236] at hard labor, is that a fact?

A. That's right. As a matter of fact, I inquired about that. I don't know that his job was changed until the testimony came out here in Court.

(Testimony of J. Frank Wickhem.)

Q. I see. Captain Wickhem, do you fix policies in regard to punishment other than punishment prescribed by law or which may be considered punishments from which written laws are used as a guide, or such as the donation of blood or anything like that?

A. No, there has been no punishment exacted to my knowledge at any time since I have had connection with the Provost Courts.

Q. That policy was abandoned before you became Provost Judge?

Mr. Ennis: I object on the ground that there is no testimony that there was any such policy.

Q. You recall when part of the punishment used to be a donation of blood here in the Territory?

A. I have heard about that.

Q. Well, you know that's a fact, don't you?

A. Purely through hearsay; not while I've been here. That happened before I was in the Army. It didn't happen while I was in the Army, in any way, shape or form.

Q. Would your records show that?

A. I don't know that.

Q. Do you keep records of the number of pints of blood or anything like that?

A. I have never seen any such records. [237]

Q. And how about bonds that were ordered to be purchased?

Mr. Ennis: Objection.

Q. As a part of the sentence—do you keep records of that?

(Testimony of J. Frank Wickhem.)

A. There has never been any sentence pronounced since I have been connected with the Provost Court like that.

Q. You are familiar with the fact that prior to your connection with the Provost Courts there have been such sentences?

A. Only through newspaper testimony and conversations that you have had here. I don't know it to be a fact.

Mr. Anthony: That's all.

By Mr. Ennis:

Q. Captain Wickhem, a sentence which a Provost Judge may give is regulated and restricted by the General Orders, is not that a fact?

A. Just the maximum restriction of \$5,000 and five years, and General Orders 2 makes a maximum of \$200 and two months.

The Court: What does that relate to?

The Witness: To labor, your Honor, absenteeism.

Mr. Ennis: That's all Captain. Thank you.

Mr. Anthony: Thank you.

(Witness excused.) [238]

ROBERT K. MURAKAMI,

a witness in behalf of the Respondent, being duly sworn, testified as follows:

Direct Examination

By Mr. Ennis:

Q. Will you state your name and present occupation?

A. Robert K. Murakami, Attorney at Law.

Q. When were you admitted to the bar?

A. In 1926.

Q. Where did you study law?

A. University of Chicago Law School.

Q. When did you receive your degree from the University of Chicago?

A. In the summer of 1925.

Q. Where were you admitted to the bar? [239]

A. In the Territory of Hawaii.

Q. Have you practiced law here since that time?

A. Yes, I have.

Q. In the course of your practice have you been consulted by persons of Japanese ancestry in the Territory concerning their possible citizenship under Japanese law? A. I have.

Q. In what respect has your practice in that field been? Explain it to the Court.

A. Particularly in reference to expatriation of their Japanese nationality.

Q. Persons of Japanese ancestry would come to you as their lawyer to handle their applications for expatriation from Japanese citizenship, is that so?

A. That is true.

(Testimony of Robert K. Murakami.)

Q. Have you, in the course of your practice, had occasion to examine the Japanese law of citizenship? A. Yes, I have.

Q. Have you had occasion to study the Japanese law on citizenship of persons of Japanese ancestry born outside of the Empire of Japan?

A. That particularly.

Q. Have you prepared translations of the provisions of the Japanese nationality law bearing on the question of the Japanese citizenship of persons of Japanese ancestry born outside the Empire of Japan? [240] A. Yes, I have.

Q. And have you those English translations with you? A. I have.

Q. And have you the Japanese text of those laws with you? A. Yes, I have a text.

Q. Will you explain to the Court what the Japanese law is in respect of a person of Japanese ancestry born in the Territory of Hawaii, and explain any changes that have been made in the Japanese law? A. A person—

Mr. Anthony: May I ask this witness a few questions to find out whether or not he is qualified to give this evidence?

The Court: Yes.

By Mr. Anthony:

Q. Mr. Murakami, have you ever studied Japanese law?

A. Only in the sense as a practitioner here in the Territory and getting some correspondence, reading correspondence courses and reading com-

(Testimony of Robert K. Murakami.)

mentaries of Japanese law, and getting whatever information available here and in the Consulate and elsewhere.

Q. You never studied in any Japanese Law School? A. No, I did not.

Q. Have you ever studied in Japan at all?

A. No.

Q. Ever been there?

A. Just for a trip, a short trip. [241]

Q. Will you tell the Court frankly whether or not you hold yourself out as an expert in Japanese law?

Mr. Ennis: I object, your Honor, on the grounds that the witness is being asked to testify about one aspect of Japanese law, not Japanese law generally.

Mr. Anthony: Well, I don't understand that an expert in foreign law can come in and say that I just know the law relating to notary public.

Mr. Ennis: On the contrary, the law is that an expert is usually qualified in one aspect of the law. I doubt that Mr. Anthony would claim that he was an expert in the patent laws of the United States.

Mr. Anthony: I don't claim to be an expert on anything. Well, I'll reframe my question, your Honor.

Q. Do you think that you are an expert on the Japanese law relating to citizenship, nationality, expatriation and those kindred subjects?

Mr. Ennis: I object on the grounds, your Honor, that he is calling for a determination which your

(Testimony of Robert K. Murakami.)

Honor should make. I think the witness is perfectly willing to state what his person is and what his knowledge of Japanese law is. He should not be asked as to conclusions whether he considers himself as an expert.

Mr. Anthony: I'm asking him if he is qualified and to tell the Court.

The Court: You asked him whether he considered himself an expert. [242]

Mr. Anthony: Well, I'll change that. I'll reframe the question. Mr. Murakami, do you think you are qualified in Japanese law to tell this Court what the Japanese law was relative to nationality, citizenship, expatriation and kindred subjects?

The Witness: I wouldn't go about kindred subjects, but I could go only to this extent, that I think I can tell the Court just exactly what the situation is and what the requirements are and how it is done, etc., as to the expatriation of citizens of dual nationality from the Japanese nationality.

Mr. Anthony: Have you ever read a decision by a Japanese court?

The Witness: I have read decisions of the Japanese courts.

Mr. Anthony: Relating to nationality?

The Witness: No, not on nationality.

Mr. Anthony: Are there such things as decisions relating to citizenship and nationality under the judicial system of Japan?

The Witness: I should imagine so, but I don't know.

(Testimony of Robert K. Murakami.)

Mr. Anthony: You have never read one?

The Witness: No.

Mr. Anthony: I object to the witness testifying, your Honor.

Mr. Ennis: Now, let's pursue this question of qualifications a little further.

By Mr. Ennis:

Q. Have you read the statutory provisions of the Japanese law about nationality? [243]

A. Yes, I have.

Q. Have you read Japanese treatises about the law of citizenship? A. I have.

Mr. Ennis: Now, if the Court please questions such as the opposing Counsel has addressed to the witness may go to the weight which is to be given to the witness' testimony. But they do not go to the absolute disqualifications.

The Court: I think that is so. Apparently there is nothing before the Court on the subject. You didn't make an objection to Mr. Anthony's questions? Oh, yes. Now, the last thing was that Mr. Anthony objected to this witness testifying further on the subject.

Mr. Anthony: On the ground that he has not shown himself to be qualified, your Honor.

The Court: Overruled.

Mr. Anthony: With all due respect to Mr. Murakami as a lawyer learned in our law.

The Court: Overruled. (To witness): Have you made any study of the same subject along the same lines as to any other nation, other than Japan.

(Testimony of Robert K. Murakami.)

any European nation, Italy, Germany, France or England?

The Witness: No, your Honor, except to the extent of reading text books concerning nationality and dual nationality, etc., written by American text writers.

The Court: Dual nationality, is it a thing that is peculiar [244] to Japanese laws or is it general in the laws of other countries or any country?

The Witness: I understand that it is not peculiar to Japan. As a matter of fact, it was taken by Japan from continental Europe.

Mr. Anthony: Japanese civil code was based upon the German civil code, was it not?

The Witness: That is so.

Mr. Anthony: That is a civil law country?

The Witness: Yes.

Mr. Anthony: The same as the Italian law, then, or German law?

The Witness: That is true.

The Court: French?

The Witness: French.

The Court: You may proceed.

Mr. Ennis: I request to be marked Respondent's Exhibit No. 10 for identification these four sheets purporting to be English translations of provisions of Japanese law on nationality.

(Received and marked "Respondent's Exhibit No. 10 for identification.")

(Testimony of Robert K. Murakami.)

By Mr. Ennis:

Q. Mr. Murakami, I show you Respondent's Exhibit No. 10 for identification. Are these English translations of the provisions of the Japanese law prepared by yourself? (Showing witness several typewritten sheets of paper) [245]

A. They are.

Q. From the Japanese text?

A. From the Japanese text.

Q. Now, will you state to the Court and explain what the Japanese law is and any change that has been in the Japanese law on the Japanese citizenship of persons of Japanese ancestry born outside of the Empire of Japan, and particularly in the United States?

A. The law, the nationality law of Japan prior to 1916 was that a person that was born of a Japanese father was a Japanese, whether he was born in Japan or in the Territory of Hawaii. In 1916 there was an amendment which made it possible for a person born in a foreign country, that is, a foreign country from Japan, to expatriate or give up his Japanese nationality by taking steps. But that was only limited to those between 15 and 17, I think. But the amendment which is now in effect, and the nationality law as revised now and in effect is that—it came about in 1924, the law of 1924—it made a drastic change in the nationality law of Japan in this respect, that a person born, say, in the Territory of Hawaii of a Japanese father will not be a Japanese, that is, not be a Japanese subject unless

(Testimony of Robert K. Murakami.)

within 14 days from the date of the child's birth his birth is registered with the Japanese Consulate, and at the same time there is shown that there is an indication with the report of birth that the child shall retain his Japanese nationality. In such report and such indication of intention to retain Japanese nationality were [246] not manifested and reported to the Japanese Consulate, then retroactive to the date of the child's birth this Japanese child never acquired Japanese nationality.

Q. What date was that 1924 enactment effective?

A. The act was enacted in 1924 and became effective in December 1, 1924. If, however, the parents reported the child's birth to the Japanese Consulate within the period of 14 days, then, of course, the child retained his dual, that is, Japanese nationality. But such child may later or the parents may later take steps to expatriate the Japanese nationality. This step, that is, this provision of the expatriation was extended also to those who were born prior to the effective date of the act, that is, those born prior to December, '24, in countries designated by the Imperial ordinance, which included the United States and five other western hemisphere countries. And so, by that revision of the nationality law, those persons of Japanese ancestry born in the Territory of Hawaii, let's say, prior to December 1, 1924, could, by making a report to the Home Ministry through the Japanese Consulate, expatriate their Japanese nationality at will, in other words, by their own volition.

(Testimony of Robert K. Murakami.)

Q. In the course of your practice, Mr. Murakami, were you familiar with and have you seen the forms of registration of births with the Japanese Consulate made out by persons in this Territory?

A. Yes, I have.

Q. And it was the practice to make them out and file them with the Japanese Consulate? [247]

A. Yes, for those parents who intended to have the Japanese nationality retained for some reason or other.

Q. Respondent's Exhibit 10 for identification, which I showed you, contains the text of these provisions of Japanese law which you have referred to in your testimony?

A. Yes, only the translation of the provisions as they now stand, that is, with the 1924 amendment.

Q. Yes.

Mr. Ennis: I offer Respondent's Exhibit 10 for identification in evidence.

The Court: Received Exhibit 10 in evidence.

(Respondent's Exhibit "No. 10" was received in evidence.)

[Respondent's Exhibit No. 10 is set out in full as Respondent's Exhibit No. 1, starting at page 526 of this printed record.]

Mr. Ennis: That's all, Mr. Murakami. Just a minute, I think Mr. Anthony wants to ask a question.

Mr. Anthony: No, no questions.

(Witness excused.)

After Recess

(11:40 a.m.)

Mr. Anthony: Your Honor, I'd like to call Mr. Murakami, one of the witnesses for the Respondent, for further cross-examination. Is Mr. Murakami in the Courtroom?

ROBERT K. MURAKAMI,

a witness in behalf of the Respondent, having previously been sworn, resumed and testified as follows:

Cross-Examination

By Mr. Anthony: "

Q. You have already been sworn, have you not?

A. Yes, I have.

Q. Will you state briefly to the Court the difficulties involved in the expatriation of dual citizens of Japanese ancestry?

A. The difficulty is in the fact that a great many of the persons of Japanese ancestry born in the Territory of Hawaii were not registered with the Board of Health and consequently could not get their birth certificates, or they did not have the Hawaiian birth certificates already obtained to prove their American citizenship in order to take the steps to expatriate. So that was one of the obstacles or one of the difficulties which first had to be overcome. And when they did not have those certificates, those of us who were helping them had to let them get the birth certificates first and then,

(Testimony of Robert K. Murakami.)

of course, the next step was to get what is called the copy of the family record in Japan.

Q. Where would they get that from? [249]

A. That would have to be gotten from the village office in Japan from which the parents of the individual came from.

Q. Then, after you got that back from Japan, what would be done with that record?

A. That record, together with the report of expatriation, and also together with the copy of the birth certificate, would have to be filed with the Japanese Consul.

Q. You are talking about cases in which the person is not even registered with the Consul, is that right, prior to 1924?

A. Well, in the case where the person was not registered with the Japanese Consulate, there is the additional or there is another step prior to that. That is to say, the report of the birth of the child had to be made through the Japanese Consulate first. And then—

Q. Even though the child's name was not on the Consul books, is that right?

A. That is true.

Q. Then what would happen?

A. Then we would take the steps to file a report of expatriation, together with a copy of the family record and birth certificate.

Q. Were there any individuals that had no mother or father or no grandfather or grandmother?

A. There were.

(Testimony of Robert K. Murakami.)

Q. How would they get some kind of a document to file with the Consulate? [250]

A. In such event the child had to be—a report of the child establishing a home would have to be made in Japan through the Japanese Consul here. In other words, the child would establish a new home or a new family.

Q. In other words, he'd have to build himself into a new family tree, is that right?

A. That is true.

Q. And once he did that he'd get a record of that new family tree, bring that back here to file with the Consul, is that right?

A. Yes, a copy of that family record.

Q. That would get him on the books of the Consul?

A. Yes.

Q. Then, from there on, you'd start your expatriation?

A. That is true.

Q. How long would that take?

A. Of course, in that extreme case that you last referred to it might take six months or a year.

Q. Was there any resistance on the part of the Japanese of this Territory to going through the process of expatriation?

A. Yes, to some extent.

Q. What was the basis of their objection to expatriation?

A. The biggest objection they had was an argument along this line: Well, I don't want to take any step which would be construed as a recognition

(Testimony of Robert K. Murakami.)

of any Japanese claim on me; and by expatriating or taking steps to expatriate, I would be admitting [251] that the Japanese Government has some claim on me. And I don't want to do that.

Mr. Anthony: That's all.

Mr. Ennis: No further examination.
(Witness excused.) [252]

Honolulu, T. H.

April 11, 1944

9:03 o'clock, a.m.

(The hearing was continued.)

The Clerk: Habeas Corpus Docket No. 298, in the matter of the application of Lloyd C. Duncan for a Writ of Habeas Corpus, case called for further hearing.

Mr. Ennis: May we proceed?

The Court: You may proceed:

Mr. Ennis: General Richardson, will you take the stand, please?

LT. GEN. ROBERT C. RICHARDSON, JR.,

United States Army, a witness in behalf of the Respondent, being duly sworn, testified as follows:

Direct Examination

By Mr. Ennis:

Q. General Richardson, will you state your full name and your present position?

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

A. Robert C. Richardson, Jr., Lt. General, United States Army, Commanding General of the Army ground and air forces in the Central Pacific area.

Q. When did you enter the Army, General Richardson? A. In 1900, June 19, 1900.

Q. General Richardson, will you state very briefly and in chronological order, from 1900, the military positions and [253] experience that you have had?

A. After four years at the U. S. Military Academy at West Point, New York, I was assigned to the Cavalry in the Philippine Islands. I then returned to the United States and was stationed in San Francisco in command of "I" Troop of the Fourteenth Cavalry. For the next four years I was instructor at the U. S. Military Academy at West Point, followed by a tour in the Philippine Islands until 1911. I returned to Texas where I served for three years in the Cavalry on the Texas border, returning again to the U. S. Military Academy as an instructor until the outbreak of the war.

I was then Aide-de-Camp to Major General Thomas H. Barry and was with him and observed in the early part of the European War on the western front. I was subsequently detached in December, 1917, to the American General Headquarters and served in the "G-3" or operations section of GHQ.

I was in command of General Pershing's Advance General Headquarters at Lyon until the

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

Armistice, at which time I was sent to command the City of Trier, Germany. For quite awhile I was in the Allied Peace Conference, returning to the United States in 1919 for a tour of the General Staff. I then returned to the Philippine Islands in 1921, where I served for two years and one-half on the General Staff of troops.

I was next detached to the Command and General Staff School at Fort Leavenworth, Kansas, followed by two years and [254] a half in Paris at the Ecole Supérieure de Guerre, or the French War College, from which I was sent as Military Attache of the American Embassy at Rome.

I then returned to Fort Riley, Kansas, for a tour of duty with the Cavalry—in which I was detached—and the U. S. Military Academy as Executive Officer; and subsequently appointed Commandant of Cadets, in which capacity I served for four years and three months. I then went to the Army War College, Washington, D. C., for a tour of duty, followed by a tour on the War Department General Staff in the Military Intelligence.

Q. What year was that?

A. 1934-35. I was then appointed Commanding Officer of the Fifth U. S. Cavalry, Fort Clark, Texas, which regiment I commanded for two years and a half. I was then appointed Brigadier General of the Line and assigned to the command of the Second Cavalry Brigade at Fort Bliss, Texas.

I was next detached to command the Cavalry School at Fort Riley, Kansas. For twenty months

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

I served in that capacity, was appointed a Major General and assigned to command the First Cavalry Division at Fort Bliss, Texas.

I was next detached in January, 1941 to organize the Bureau of Public Relations of the War Department for the Secretary of War. After six months in that capacity, I was appointed Commanding General of the Seventh Army Corps, in which capacity I served for twenty-two months. [255]

I was then detached and sent to Hawaii and appointed Commanding General, Hawaiian Department. My title was subsequently changed to Commanding General, Central Pacific Area.

Q. General, will you describe the geographical limits of the Central Pacific Area?

A. The Central Pacific Area includes a sector of the Pacific—the responsibility of the Commander-in-Chief, Admiral Nimitz—in general terms it is a large sector of the ocean north of the equator.

Q. And what are its limits west and east?

A. It extends to the coast of California, to Japan.

Q. And is that Central Pacific Area designated as your command by the War Department?

A. It is.

Q. And in addition to its designation by the War Department is it also part of the command designated by the Joint Chiefs of Staff?

A. It is. It is one of the subdivisions of the Pacific Ocean areas which have been delineated by the directives of the Joint Chiefs of Staff.

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

Q. And it includes the Territory of Hawaii?

A. Yes, it does.

Q. At what time was the Central Pacific Area created?

A. On August 14, 1943. Pardon—correction. I was appointed Commanding General of the Central Pacific Area on [256] August 14, 1943. The Pacific Ocean areas were created by direction of the Joint Chiefs of Staff at some time long prior to that, when Admiral Nimitz was given his directives.

Q. Prior to setting up the command, the command of the Central Pacific Area, what was the military command, the Army command, which included the Territory of Hawaii?

A. The designation of the Army command was the Hawaiian Department.

Q. And military command in the Territory on December 7, 1941, was designated the Hawaiian Department, is that correct?

A. The Hawaiian Department, correct.

Q. Will you describe very briefly as a basis for your testimony, General, what the Territory of Hawaii is within your Central Pacific Area, its geographical nature generally?

A. The Territory of Hawaii includes those islands of the Hawaiian group beginning with Kauai and ending with Hawaii; in other words, Kauai, Maui, Lanai, Molokai, and Hawaii—Oahu, of course.

Q. For purposes of the conduct of the war, General, does this Central Pacific Area, including the Hawaiian Islands possess and has it been given any

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)
military designation other than the Central Pacific Area? I mean, has it any other designation in military parlance in terms of carrying on war activity here? [257]

A. Yes, this whole area under the command of the Commander-in-Chief of the Pacific Ocean Area, Admiral Nimitz, is an active theatre of war, and within that theatre of war is the theatre of operations, of which the Hawaiian Department is a part.

Q. Will you explain what you mean, from the military viewpoint, by the terms "active theatre of war" and "theatre of operations?"

A. Well, an active theatre of war is that area which is or may become actively involved in the conduct of the war. A theatre of operations is that part of an active war theatre which is needed for the operations either offensively or defensively, according to the missions assigned or a combination of the missions; and it includes also the administrative agencies which are necessary for the conduct of those operations.

Q. From the viewpoint of military science and study, so that we may see the situation of the Territory in the war picture in the Pacific, will you state very generally the strategic and tactical significance of the Territory of Hawaii in the Pacific war situation?

A. From a military point of view, this group of islands is the keystone of the defense of the western coast of our country; beginning in Alaska, with Alaska and the Panama Canal, it forms a

(Testimony of Lt. Gen. Robert C. Richardson, Jr.) large bastion. The security of our west [258] coast depends upon the security of this bastion. And the Hawaiian Islands, of which Hawaii is the most important one, is the apex of this bastion. And, therefore, the preservation of those, and the security of this area, is paramount to the strategic success of our Army and Navy, and also for the defense of our country. Should it be penetrated at any time, we would suffer materially, both tactically and materially, and it would interfere very seriously with the prosecution of the war.

Q. Now, General, turning from the description of the Territory of Hawaii and the Central Pacific Area, will you state what duties have been assigned to you by the War Department and the President in connection with your command here as the Commanding General of the Central Pacific Area?

A. Under my directive of the War Department I have been assigned to command all the ground and air troops of the Army of the Central Pacific Area. And in addition to that, I am to execute and supervise any operations which may be assigned to me by the Commander-in-Chief of the Pacific Ocean Areas. I was also designated, I was also given the mission and designated as Military Governor of Hawaii in my War Department order, which assigned me to this command by order of the Secretary of War.

Q. Now, in addition to your delegation of authority from the War Department, did I understand you to say that you [259] also have authority delegated to you by the Commander of the Entire Pacific Area, Admiral Nimitz?

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

A. Yes, sir, as Admiral Nimitz has responsibility for the entire Pacific Ocean areas which includes, of course, the Central Pacific area, as a segment of his command. He has delegated to me the immediate responsibility for the security of these islands.

Q. In connection with your official duties to carry out the military mission you have described, have you become familiar with enemy actions in your command and in the Territory of Hawaii?

A. I have attempted to familiarize myself with every single detail of the enemy action.

Q. Could you state in a general way what enemy actions have occurred and are probable and likely in this Territory?

A. We are all very familiar, of course, with the tragic events of December 7, 1941, when the Japanese suddenly attacked the Hawaiian group. We know that it is still within their capability to make an attack of that nature. They are also capable of coming here in submarines and executing raids of a various character, with a view of destroying our installations or obtaining information which is much more valuable than the destruction of any installations.

Q. Well, now, General, insofar as the requirements of military secrecy will permit, could you state to the Court [260] any recent enemy action in this Territory?

A. I might review for you, in order to give you the complete picture, the activity of the Japanese

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)
in the Hawaiian group. Subsequent to Pearl Harbor there was great submarine activity in these waters. Between December 7th and December 31st, there were innumerable reports of the presence of submarines. The records will show that between December 7th and December 31st Kahului was shelled twice by submarines. On December 30th, the Port of Hilo was shelled; December 30, 1941, by enemy submarines. And on the following day, December 31st, the submarines shelled Nawiliwili, Kauai. On January 28, 1942, an Army transport, the "Royal T. Franks," was sunk by a torpedo from an enemy submarine on a channel between Kauai and Maui. Subsequent to that date there have been recurrent reports and verifications of the presence in these waters of enemy submarines.

To illustrate: Since last March, one year ago, we have official records of the presence of 30 submarines in these waters, the last one on March 10, 1944, just a few weeks ago, within 20 miles of Oahu. In addition to that, there has been aerial activity in this area since the attack upon Hawaii. We have definite records of the presence of two airplanes, at least, and possibly two others. We know that on March—the night of March 4th and 5th, an enemy plane or planes—

Q. What year is this, General?

A. 1942, nearly two years ago—launched probably from [261] enemy submarines, and dropped bombs on Tantalus Hill. As recent as October, 1943, just prior to the Gilbert operations, an enemy

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)
plane, probably launched from a submarine, reconnoitered Pearl Harbor at night at a time when the entire fleet was concentrated in those waters preparatory to the sortie for the attack upon the Gilbert Islands.

Q. From a military point of view, is secrecy a prime element of success in such an attack?

A. It is of paramount, transcendent importance. And, even though that airplane did no damage to the Island of Hawaii nor disturb the activity and the routine of life here, had it succeeded in getting the information of the presence of this fleet and transmitting that information to the enemy, it might have caused more damage than the *construction* of this whole port.

Q. From the viewpoint of the military authorities, do the activities that you have mentioned, air and submarine reconnaissance, constitute the waging of war in this Territory?

A. In my judgment as a soldier, I consider that they do.

Q. Now, do your official responsibilities here require you to make military appraisals of the possibility of an attack or an invasion against these islands?

A. Yes, we not only make appraisals but we make them constantly and periodically. We make what is known as an [262] estimate of the situation, which I might explain from a military point of view as estimating the capabilities of the enemy and what you might do to him in view of your assigned

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)
mission; the means that are at your disposal for that execution, and the means at the disposal of the enemy for the execution of his mission, taking into consideration, of course, all factors of terrain, weather, etc. We then analyze the lines of action which are open to the enemy and the lines of action that are open to ourselves, and weighing those two we come to a decision. That is known as an estimate of the situation.

Q. Well, have you applied that military function of estimating the military situation to your command here? A. I have.

Q. Well, now, would you state, General, some of the major military factors that enter into your estimate of the military activity that is required of you here?

A. Being charged, as I am, with the immediate security of the Hawaiian Islands, under the directive from the Commander-in-Chief, I naturally try and project myself into the mentality of the Japanese commanders, in order to deduce from their estimate as to what they might do and why they should wish to come to Hawaii and launch an attack against these islands. From that deduction I might point out certain factors which should be very attractive to the Japanese High Command.

In the first place, we have here in the Hawaiian Islands the United States fleet, based in Pearl Harbor. This is a [263] large body of water which offers to the fleet a safe anchorage for rest, recuperation, but above all, for repair; it contains, as

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)
you know, dry docks, storage facilities, large shops, fuel, supplies, and everything that is necessary for the fleet to prosecute this war.

Therefore if the Japanese could cause any damage to this installation or cause any damage to the fleet units when they are at anchorage at the base, they would succeed in interfering to a disastrous degree with the prosecution of this war. Pearl Harbor today is the most attractive target for an enemy, and in waging war with the Japanese it is in my judgment the most remunerative target in the world today. In addition——

Q. Well, now, are there other military targets in addition to the target available here?

A. In addition to the transcendent importance of the security of Pearl Harbor and the fleet, the Japanese know perfectly well that we have here a large air base, that we have built many fields, that we are concentrating planes at this base, that we are building up our supplies for the prosecution of the war, that Oahu is the center of our communications system for the Pacific area. And, therefore, putting all of those factors down and weighing them, it is such a tempting prize that I know they are not overlooking it now. It may be held in abeyance for the moment, its capture or the [264] attempted capture, but it is certainly in the minds of the Japanese High Command.

Q. Well, do you weigh their capabilities of their approaching such a prize. Is that a factor in your judgment?

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

A. It is decidedly a factor. The Japanese still have the capabilities of launching an attack against this place. We have not—although we have injured the Japanese fleet, we have disturbed shipping—we have not destroyed their capabilities of attacking Oahu.

Q. Well, in view of the successes of our own fleet, General, could you explain how in your appraisal you consider that the Japanese would be able to make such an attack? Would you be more specific about that capability that you mentioned?

A. We know that the Japanese fleet has not been destroyed; it has never come to grips with our own fleet; it has suffered some damage, just as our fleet at times has suffered damage. We know they still have a number of carriers; and we know that it is well within their capabilities of launching a surprise attack against Oahu and Pearl Harbor as they did on December 7, 1941.

Q. How would the Japanese go about launching such an attack and keeping it a surprise? How could they from a military point of view keep it a surprise?

A. Yes, that is perfectly possible. The Pacific Ocean is a very large area. It is impossible for our Navy to cover [265] the surface of that ocean either with surface vessels or with air. They could organize task forces, maintain radio silence, move into this area under the protection of a storm or what is known as a cold front, or a zone in which the cold air from the north meeting the south air

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)
from the warm air from the south constitutes a large zone of mist—hide in that front and approach very closely to Oahu and escape detection despite all of the technical devices which have been placed at our disposal, such as radars for the detection of such a force. These devices have their limitations. The Japanese know what they are, and would exploit them and stay out of range of our electric detecting devices.

Q. Well, now, is this cold front that you mentioned an unusual or usual weather phenomena?

A. No, that is a very usual weather phenomena. It occurs all the time; the periodicity is, you might say, regular.

Q. Now, in addition to enemy capabilities to strike from a carrier force, is there any other important way in which the Japanese enemy could attack this Territory?

A. Yes, there are several other ways in which the Japanese could attack this Territory. In the first place, they could make use of their submarines. In the new technique of warfare the use of the submarine has been highly developed. They approach within hostile shores at night, launch rubber boats, send parties ashore for information. One of our greatest problems is the installation of the security of these islands, [266] and the only way that security can be maintained is by the strictest exercise of counter intelligence to prevent the enemy from gaining any knowledge of our activity on these islands, of our intentions.

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

Q. By counter intelligence you mean that branch of military intelligence which seeks to prevent the enemy from obtaining knowledge of your operations?

A. Exactly.

Q. I see.

A. In addition to that, we have here in these islands, as you know, one-third of the population which is mixed; 33 and 1-3 of the population of the Hawaiian Islands is of Japanese blood, and therefore there is within that group potential danger of the transmission of information to people of their own race. From submarines could be launched small parties, reconnaissance parties; they could mingle with the population here, completely undetected, and obtain information which would be of such value to the Japanese High Command that it would transcend any attack launched here with a few bombs.

Q. Well, in addition to sending persons aboard for espionage purposes, are so-called commando raids or raiders from submarines feasible in your military experience?

A. Those are perfectly feasible, and it is a very common practice for submarines to launch commando raids, which would attack our installations, radio, radar, supplies [267] of oil.

Q. Have our own forces used that technique of commandos from submarines?

A. We have used that to a limited extent, but we have used the technique in a very valuable way prior to the occupation of Africa.

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

Q. You refer to our contact with the French?

A. With the French in Africa, where all the preliminaries were arranged which meant the saving of a great many American lives.

Q. Well, now, General, you have mentioned the character of the population in this Territory. As I take it, that is a military factor in appraising the possibility of attack or invasion here?

A. It is a most decided military factor. It is absolutely necessary that the military commander in this area have some means at his disposal for controlling the movements and the activities of people whom he suspects may be potentially disloyal. Of course, my remarks do not apply to the entire Japanese population. But it would be naive to assume that in a population of 160,000 that we did not find a group of potentially disloyal Japanese. As a matter of fact, we know that some of them are not loyal to America. They have so stated when they have been brought before the internment boards. And I have been forced to put them in internment [268] camps for the security of these islands.

Q. Will you explain what your internment program is and how it relates to military security?

A. Under the operation of this very modified form of martial law which exists in the Territory, we have an internment camp for interning, ~~whether~~ they be citizens or aliens of any blood, of those whom we suspect of disloyalty and who are necessary to be incarcerated for the security of these islands. When the finger of suspicion is pointed at any one

(Testimony of Lt. Gen. Robert C. Richardson, Jr.) of them, they are brought before a hearing board, which is composed of three citizens of this community. The recommendations of that hearing board are then referred to a board of officers composed of a representative of the Naval Intelligence, of the Military Intelligence, and of the F.B.I. The recommendations, then, of both of those boards are forwarded to the Office of the Military Governor, where they are reviewed and final determination passed, whether the accused be placed in the internment camp, whether he be paroled or whether he be released.

In addition to that, the record of every man in the internment camp is periodically reviewed every Thursday afternoon by the hearing board of the Office of the Military Governor. And we release or parole on an average of five or six a week. During the month of March we were forced to intern, I think it was 41; I am not sure but I have the figures. [269]

The Court: Which year?

The Witness: This year, sir, March of 1944, this past month.

Q. As I take it, a large number are interned, and they keep coming in and going out as you find you can parole them?

A. That is true. On the whole, we have interned since the beginning of the war 1,396, a number of whom have been sent to the mainland.

Q. Now, they include citizens as well as aliens

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)
and persons of Japanese blood or persons of other blood? A. Yes.

Q. Depending upon the particular facts that your intelligence service calls to your attention?

A. Exactly.

Q. I see. Do you find among the Japanese any particular group of citizens among whom you are likely to find persons who are not loyal?

A. As you know, the Japanese might be placed into several categories: there are the aliens, pure and simple; there are the Japanese who were born here and are American citizens; there are other Japanese who have been expatriated, and those have been born here but registered by their parents in the Japanese Consulate and upon whom the Japanese Government professes to exercise a certain degree of loyalty and allegiance.

Q. You are familiar with the group of American-born [270] Japanese educated in Japan also, are you not?

A. Yes, a number of whom have been born here and have been sent back to Japan for their education, which they received, and all their impressions have been formed during their adolescent life.

Q. They are known as the Kibei?

A. Yes, that is the name.

Q. Now, General, is it your experience that in addition to finding persons whose loyalty to the United States is questionable, either in the Japanese part of the population or the other part of the

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)
population, that you do find individuals in that part of the population who are entirely loyal?

Mr. Anthony: If the Court please, I have listened at great length here to what I consider as irrelevant testimony to the issues in this case. I would like now to interpose an objection to his testimony. As the Court knows, and Counsel knows, under the Federal statute any person whom a military commander desires to have excluded may be excluded by the operation of the statute upon application made.

Mr. Ennis: If the Court please, on the particular question to which Counsel has objected, I think that it is fair that if the Military Governor, the Military Commander, in the course of his duties and in the course of his military experience generally, has not considered part of the population as having given specific loyalty, that in fairness to that [274] population that should be brought out in the testimony. And it seems to me it is rather a curious question for Counsel to object to.

Mr. Anthony: I think the whole line is irrelevant, your Honor. We are trying a comparatively simple issue here, whether this Petitioner is entitled to a trial by jury for an ordinary act of assault and battery, assault and battery under the Federal statute. I don't see the relevance of this.

The Court: Well, we have entertained quite a volume of immaterial matters, without passing on it. You may proceed, General.

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

The Witness: - I would like to say that there are thousands of Japanese here whom I believe to be very loyal, absolutely loyal. They have shown that loyalty on innumerable occasions. One of the most outstanding examples of their loyalty has been the very patriotic response to the colors of the Japanese when they were asked to volunteer. Their conduct on the field of battle in Italy leaves nothing to be desired. And it is inconceivable that their parents and their relatives, who have so willingly given these men, their sons, for the cause, should be disloyal to the United States.

Q. Now, General, in appraising the military situation, including the military factors you have mentioned, how do you wade into the picture the recent great successes of our fleet? Does not that diminish greatly the risk of an attack which you [272] have described?

A. The reasons for the success of our fleet lies in the fact that we have been secure in this base. It is from this base that the fleet is mounted, that all of our operations are mounted. It is here that is the heart of the operations of the Pacific Ocean areas. If you take any action which is injurious to that heart, you paralyze the activity of the fleet. It might seem, I know, to the layman that when the fleet is far out in the Pacific Ocean areas achieving successes in the Marshall Islands or achieving successes at Panau, that the danger is removed from Oahu. On the contrary, the danger has increased. And I know, as the Military Commander who is

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)
responsible for the security of these islands, that when the fleet returns to Oahu the danger increases; that I never go to bed at night when that fleet is here, or even any other night, without wondering, Have we taken every single precaution to exercise the authority conferred upon me in the discharge of my responsibilities?

Q. In other words, these successes, from the military point of view, in your opinion, do not lessen the danger of an attack on these islands by the Japanese?

A. Indeed, they do not, and that cannot be said too emphatically.

Q. Now, General, turning to the subject of the provost courts, which Counsel has mentioned, will you state how you [273] perceived the provost courts to be part of the military security system?

A. Well, in order to enable me to discharge my responsibilities under this modified form of martial law, and in order to achieve the security which is the only reason really for the prevalence and existence of the modified form of martial law here, I am concerned, as a soldier, with my duties of security.

We have been obliged to publish regulations for the control of firearms, for the control of ammunition, for the illegal possession of radios, for the illegal possession of cameras, for the institution of the curfew, for the institution of the blackout, for the ejection of undersirables from restricted areas. In order to enforce those regulations, I must have at my disposal some sort of tribunal to that effect.

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

Under the rules of martial law, we are authorized to appoint what is known as provost courts. These provost courts are nothing more or less than police courts. The layman might say, Why not do away with them? I personally have given great consideration to the elimination of provost courts, in order to try and carry out the directions of the President when he approved the suspension of the privilege of the Writ of Habeas Corpus and also the continuation of martial law in this Territory last, hoping that I would be able to do away with the provost courts and turn the trial of those offenses over to the civil courts. But upon examination of the circumstances I found that it is impossible for the civil courts to try [274] them because they are not offenses against Territorial laws, nor are they offenses against any known Federal statute.

Now, in rebuttal it will probably be said, But under the Organic Act the Governor can publish regulations for the punishment of infractions of these offenses.

Q. Under the Hawaiian Defense Act?

A. Under the Hawaiian Defense Act, as he did in the curfew and the blackout. But I should like to point out that in that instance—assuming that he did/and that they were perfectly legal—then the violation of any of those offenses would have to be referred to a civil court for trial, with its concomitant delay. The military are the ones that detect these offenses. The military hold the witnesses, as a rule, and therefore we cannot brook a delay.

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

And there must also be in the punishment a certain measure of retribution. The punishment must be swift; there is an element of time in it, and we cannot afford to let the trial linger and be protracted.

Again, to give another illustration, assuming that the Governor did publish regulations to this effect, I am forced then to be subjected, as Military Commander responsible for the security of these islands, I am forced to the control of another official for the enforcement of my regulations. To illustrate, well, suppose that we did turn them over to the civil authorities and that I had set the curfew, or the Governor had set the curfew at 10 o'clock. An emergency arises, and [275] I feel that it should be changed instantly to 8 o'clock. I call upon the Governor. He says, No;—not arbitrarily but because he has a very honest difference of opinion—no, I think it should remain at 10 o'clock. And he refuses, therefore, to modify his order. What am I to do as Military Commander responsible for the security of these islands? The only resource left is to reinvoke martial law, and then we are back where we started.

Q. Well, Counsel mentioned the power to set up a military area under Executive Order 9066, and to promulgate regulations in that way. Would that meet your problem of military security?

A. No, it would not, for the following reason: We will assume that we are operating under Executive Order 9066. All of the offenses which are con-

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)
tained therein, if violated by anyone in this Territory must of necessity be referred to the civil courts. The Military Commander, then, is subjected to all sorts of influences, political and otherwise, as happened in the cases on the east coast in both Philadelphia and Boston, when the Commander of the Eastern Defense Command ejected what he considered undersirable persons from the areas, and he was overruled by the courts and they were put in.

Now, in an area of this character, the Hawaiian group, which is an active theatre of war and which is in the theatre of operations, it is inconceivable that the Military Commander [276] should be subjected for the enforcement of his orders to the control of other agents.

Q. Well, I take it, General, from the military viewpoint, then, you believe that your responsibility for the military security requires that you have an agency under your control to enforce your military security regulations, is that what it comes down to?

A. I do.

Q. Now, General Richardson, based upon your appraisal of the military situation, will you state your opinion as to whether or not there is imminent danger of invasion of this Territory by the Japanese enemy?

A. I shall state from a soldier's point of view the actual reality of the situation, without attempting to argue or define the academic definition of "imminent danger of invasion." We know that, at

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

least we feel quite certain that the Japanese are totally incapable of coming to these islands with a large land-based force for the purpose of seizing and capturing it. We do not think that is within their capability at all. The time for that is past. And, therefore, if that interpretation is paramount in the mind of the layman, it may be eliminated. But you must remember that in law, as in other branches and other professions, times change. There are new developments. When that phrase was written, "imminent danger of invasion," nor the submarine, nor the airplane were in existence, nor were they ever dreamed [277] of. These two new weapons of war have enormous potentialities, and they have introduced into warfare the element of stealth, the element of surprise, and the element of speed. And, therefore, capitalizing on those new elements of warfare, our enemy, the Japanese, has at his disposal today a strong carrier force, destroyers, cruisers, battleships, and airplanes, and submarines, all of which combine those elements of stealth, surprise and speed.

Therefore, they still have the capability of launching an attack, an invasion by air, an invasion by undersea, against these islands. And they have not only the capability itself; it is always impending, as long as their capability exists, the danger impends and the danger is imminent.

Mr. Ennis: I request this be marked as Respondent's Exhibit for identification, No. 10. (Showing a typewritten document.)

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

The Clerk: No. 11.

Mr. Ennis: No. 11, an account of an interview given by General Richardson to Eugene Burns, Associated Press War Correspondent; and as Respondent's Exhibit for identification No. 12, the somewhat abridged account of that interview published in the Washington Sunday Star of November 14, 1943.

The Court: Any objection?

Mr. Anthony: I have no objection, your Honor.

The Court: Received as Exhibit 11—there are two documents? [278]

Mr. Ennis: There are two documents, your Honor, and we might mark them as you have them presently.

The Court: Exhibit 11-a and 11-b.

(Received and marked for identification Respondent's Exhibits 11-a and 11-b.)

The Court: You don't offer these in evidence?

Mr. Ennis: I only marked it for identification.

The Court: Very well, it may be marked for identification, then.

Mr. Ennis: But, if the court please, there is no objection by Counsel,—

Mr. Anthony: I have no objection.

Mr. Ennis: So I do offer them.

The Court: Received in evidence, then, as Exhibit 11, a and b.

(Respondent's Exhibit 11-a and 11-b was received in evidence.)

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

[Respondent's Exhibit Nos. 11-a and 11-b are set out in full as Respondent's Exhibits 8-A and 8-B, starting at page 529 of this printed record.]

By Mr. Ennis:

Q. General Richardson, based on your knowledge of facts, from the military viewpoint, was there an actual invasion of this Territory on December 7, 1941, by the Japanese enemy?

A. In my judgment, there was.

The Court: May I have that question?

(The Reporter read the last question.)

Q. General Richardson, I call to your attention Respondent's Exhibit 11, a and b, in evidence, and ask you to [279] examine it, and then will you state whether on any occasion prior to this trial have you testified, or rather, have you stated publicly that there was a danger of attack on this Territory? (Handing witness a typewritten document.)

A. Yes, I can identify these documents as the transcript of an interview which I gave to Eugene Burns, the Associated Press Correspondent, in which I expressed the view then, in November.

Q. Last November?

A. Last November, 1943, that I thought that there was a danger, constant and impending, of the Japanese attacking Oahu.

Mr. Ennis: That is all General. Thank you.

The Court: You will probably be subjected to cross-examination. Do you want a recess?

The Witness: No, sir; I'm perfectly all right.

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

Cross-Examination

By Mr. Anthony:

Q. General Richardson, would you say that Germany is now being invaded by virtue of bombings that are being conducted?

A. Indeed, I would. I don't know how Germany could be invaded in a more catastrophic manner.

Q. And would you also say that the British Isles are now being invaded? [280]

A. They are, periodically.

Q. And, if it is true that our submarines are plying the home waters of Japan, then Japan is being invaded by us, as you used that expression?

A. I am sure that the Japanese regard the presence of our submarines in their waters as an invasion of their sovereignty.

Q. I am not asking what the Japanese think about it. I'm asking you what you think about it.

A. I think so.

Q. Then you disregard entirely the notion of an occupation by land troops in the course of an invasion?

A. No, I didn't say that.

Q. You don't think—

A. Nor do I disregard that. That is one of the factors involved, but it is remote. It is remote.

Q. I didn't get that.

A. It is remote.

Q. I notice, General, in the "Rules of Land Warfare," Field Manual No. 27-10—I don't know whether you are familiar with that or not. Are you?

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

A. Well, I read it from time to time.

Q. Well, this isn't so old. It was published in 1940, General. This is what the manual says——

Mr. Ennis: What page is that, Mr. Anthony?

[281]

Mr. Anthony: Page 74. (Reading.)

"The state of invasion corresponds with the period of resistance. Invasion is not necessarily occupation, although it precedes it and may frequently coincide with it. An invader may push rapidly through a large portion of enemy country without establishing that effective control which is essential to the status of occupation. He may send small raiding parties or flying columns, reconnoitering detachments, etc., into or through a district where they may be temporarily located and exercise control, yet when they pass on it cannot be said that such district is under his military occupation."

I gather that you don't use the word "Invasion" in the same sense that they use it in the "Rules of Land Warfare."

A. I'll reaffirm what I stated in my direct testimony, that I personally am not concerned with the definition of invasion, or any of the terminology in the books. That, to my mind, is purely academic, and that's a matter to be decided by the courts. I am here to state, as a soldier, what I believe to be the conditions in this Territory which necessitate the continuance of the authority which I now exercise under this modified form of martial law.

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

Q. Now, General Richardson, it is true, is it not, that the front combat areas in the Pacific are some two thousand or twenty-four hundred miles away from Oahu, is that a fact?

A. No, that is not a fact. I have stated in my direct testimony that a portion of the combat areas are forward or west of here, but I consider the Hawaiian Islands in the combat zone.

Q. I don't believe you said that in your direct examination, [282] General Richardson.

A. Well, then, I should like to say it on cross examination.

Q. What you said on your direct examination was that the whole area was an active theatre of war, and that Hawaii is a theatre of operations. I understand you now to say that this is a combat area.

A. Well, but the theatre of operations, Mr. Anthony, it comprises the combat area. If I might define that for you—

Q. Yes, I am very ignorant of this.

A. I don't mean to infer that you are. But the theatre of operations is a delimitation of the active war theatre. Now, the theatre of war which is designated by the Joint Chiefs of Staff is subdivided into theatres of operations. This whole Pacific area is a theatre of war, but they have theatres of operations under General MacArthur, under General Stilwell in India, and we have one under Admiral Nimitz in the Pacific Ocean. So the theatre

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)
of operations includes the terrain where the Armies operate.

Q. Is there any military parlance that indicates that portion of the earth's surface where the fighting actually takes place? A. Yes.

Q. What is that called?

A. Combat zone. [283]

Q. You would not call Hawaii a combat zone?

A. Yes, I would, because the theatre of operations or the combat zone also includes that part assigned to your mission, whether it be offensive or defensive. We are on the defensive mission here in Oahu, whereas the fleet operates offensively from here, and some of our troops which are based here operate offensively from this base. But concurrently with its mission as an offensive base, we have a very decided mission here as a defensive base, and that defensive mission designates or characterizes it as a part of the combat zone.

Q. Then a combat zone can be an area where no shooting is going on at all?

A. Oh, yes; oh, yes.

Q. No real destruction of life or property?

A. Absolutely. In France I used to wonder sometime if we went to a picnic there in the front lines.

Q. Well, do you have any term, military term, that precisely fits the place where life and property is actually being destroyed as a result of organized warfare? A. Yes, the battle.

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

Q. Battle? Where is the battle in the Pacific at the present time?

A. It is in various places.

Q. Well, we are informed through the communiques that we have shoved the lines west of the Marshall Islands. That, I assume, is correct. [284]

A. I don't know what communicate you are referring to.

Q. The communiques of the Pacific Fleet Headquarters, which have announced the occupation by the military and naval forces of the United States the Marshall Islands. That is correct, is it not, that we now hold those islands?

A. Yes, mostly.

Q. We also hold the Gilbert Islands?

A. Yes.

Q. How far are the Marshalls from Hawaii, General, roughly? A. About 3,200 miles.

Q. Is that nautical miles or land miles?

A. Nautical miles.

Q. It is also true that we have pierced further into the defensive ring or are continually attacking Truk, according to the reports that come to us from the communiques, is that a fact?

A. We are continuing the offensive against the Japanese. The targets vary from day to day.

Q. But the targets are west of the Marshall Islands, are they not? A. For the moment.

Q. Are there any east of the Marshall Islands?

A. At the present time I know of none except

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)
within the Marshall Islands; we have a number of
targets against which we are operating daily. [285]

Q. Sometimes mopping up there?

A. I won't say it was mopping up.

Q. Well, do I understand you to say that the
farther the fleet pushes the enemy west in the Pa-
cific, the more danger there is here in Hawaii?

A. I do, most decidedly, and I cannot repeat it
too emphatically.

Q. Well, General, that's a little difficult for a
layman to understand.

A. Well, let me try and explain it to you.

Q. I wish you would.

A. I can well understand that a layman would
hold the point of view that you have just expressed.
But you must remember that in order to keep that
fleet going there has got to be a motive force, a
motor, so to speak; that motor is located here; the
heart of the operations of the Pacific Ocean is right
here in Oahu and is going to remain here until the
end of the war. When the old knights went into
battle, what did they protect first? They put armor
around their hearts, because their arms and their
feet and their eyes and the rest of their bodies were
useless unless that heart was protected. Analogously,
our aviators today have been provided with a breast-
plate. Why? So as to protect the vital areas of
the body.

The most vital area of this whole Pacific Ocean
area is Oahu, and it is going to continue to be the
most vital area [286] until the end of the war. And,

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)
therefore, while it may appear to the layman that our fleet is gaining great successes as we go west, those successes are absolutely dependent upon this place, and the paralysis of this place would render completely useless that fleet which is so successful today in the West Pacific.

Q. Well, you have told us, General, that in your judgment the Japanese couldn't organize enough force in the Pacific to capture Oahu.

A. I did not say that. I said——

Q. I understood you to say that.

A. I beg your pardon. I said that the capability of the Japanese today organizing surface-born vessels, transports accompanied by war vessels, to bring to these islands a force for the invasion of these islands is remote. We do not think that they are capable of doing that now.

Q. Is it a fact that the high tide in Japanese aggression was reached in the battle of the Coral Sea and in Midway in the Pacific?

A. I believe this, that the Japanese came down to Midway with those transports and with that navy with the idea of seizing Midway, occupying it as a jumping off place for the occupation of these islands. And, therefore, when they were defeated at Midway, their chance of organizing this ocean-borne force, of which we have been just talking, failed; and from [287] that day to this, they have never been able to recuperate sufficiently to warrant them taking the risk. But they have the capability

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

if they want to take it. It may not be as strong as they would like to have it.

Q. It is a fact, is it not, that our Navy has increased tremendously since that time?

A. It has increased appreciably.

Q. As much as ten-fold?

A. I am not in a position to answer that question.

Q. I see. General Richardson, getting down to the business of this case, I would like to have your views as to why, what is the military reason that requires the trial of what is an offense under the laws of the United States, of assault and battery, down in the provost court? What is the military reason?

A. Well, in this particular case I can well understand that the layman would think that it was an ordinary street brawl. The young man in question, however, did not attack a simple citizen walking along Kamehameha Highway or any other place in Honolulu. He interfered with the assigned duties of a sentry in time of war. He assaulted two marines. He exercised his privilege, I am told, of getting drunk, losing control of himself, and trying to force himself into one of the installations here, with which both the Army and the Navy are charged with absolute security.

Q. Who told you that? [288]

A. It was published in the papers. I read it.

Q. Very well.

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

A. Testimony of the marines. Therefore, Mr. Anthony, it is not an ordinary street brawl.

Q. What's the military reason, in your opinion?

A. Because we have to uphold the authority of the sentinels, which we place there. That sentinel may have shot that man. He would have been tried by Courts-Martial and I have no doubt that he would have been acquitted. You must remember that when we placed a sentry on duty, that young man has very grave responsibilities. Day after day, my Judge Advocate brings up to me records of Courts-Martial where these young boys have fallen asleep on posts. It seems tragic at times to have to punish them with sentences of three to five years, but we have to do it in time of war. Upon their alertness, Mr. Anthony, depends the safety and the welfare and the lives of hundreds of others of their fellowmen. This young man interfered with the sacred duty of a sentry.

Q. Well, that is a matter of dispute in this case, General Richardson. What I am trying to get from you is, why do you think we have got to have the provost courts? You first said that on account of the delays of the civil courts. Is that one of your reasons? A. That is one reason, yes.

Q. You know that to be a fact, that there are delays in the civil courts of this Territory? [289]

A. I would not say in the civil courts of this Territory because I am not familiar with them.

Q. Well, that is what we are talking about.

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

A. But I say this: I draw on my general experience.

Q. Well, is there anything else besides the delays of the civil courts?

A. Oh, yes, there are many reasons why we should have control under the provost court system. I thought I outlined that very elaborately in my direct testimony.

Q. One of the things you said was that you had to have some instrumentality to enforce your orders?

A. Yes, which are not offenses against the Territorial Courts or the Federal Courts.

Q. You are familiar with the fact that they could be made such?

A. But, as I said, even though they were made offenses, I would still have to go before the courts, the civil courts, which is objectionable when the offenses are of this character that rest upon security. And you place the Commander, then, of the area under the control of other agents for enforcement of his regulations when he has the responsibility of security. Are you going to take the responsibility for the security of these islands? Is the Court going to take the responsibility for the security of the fleet? Is Governor Stainback going to take the responsibility for the security of the fleet? No. I have it. And, nor my conscience and nor my duty will ever [290] make me say that I don't need the authority that goes hand in hand with my authority.

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

Q. You make no distinction between the trial and conviction of a non-military offense and your mission as a soldier to defend these islands and to project the offensive to the west?

A. All of these incidents, including this one, are integrated in that general security program. We cannot make those refinements and distinctions when we have those responsibilities. And you would take away from me and weaken my authority.

Q. Do you think that that would interfere with the progress of the war?

A. I do, most decidedly.

Q. If I may finish the question, if a person who is charged with, I still say an offense against the laws of the United States, was tried before a jury and we found out whether or not this man was telling the truth or the marine was telling the truth, would that weaken your authority?

A. Then why don't you refer every case that goes before the police court to a jury? Have you no confidence in the integrity of the provost judges? They are very carefully selected. You must remember that those provost judges are Americans just like you, only they have on a khaki uniform. They came from civil life, and when this war is over, they are returning to civil life, and they are just as watchful and [291] jealous of the civil liberties of our citizens as are you. I am also. I, Mr. Anthony, could well understand that the layman would object to the exercise of an authority by a Commanding General through the instrumentality

X

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)
of a provost court, if there were any abuses. But there are no abuses in the provost courts. On the contrary, the provost courts have been administered with a super-abundance of consideration for all concerned. They have been exercised with discretion.

Q. I am sure you are painting a much rosier picture than you would if you knew all the facts.

A. I think I do know the facts, because I confer almost daily with my Executive Officer, Colonel Morrison, on provost court procedure.

Q. General Richardson, do you know any of the facts as to the operation of the provost courts before you came down here?

A. I am not familiar with what preceded my entry into this theatre.

Q. You know nothing about the meting out of five-year jail sentences for ordinary misdemeanors?

Mr. Ennis: The witness has answered the question, your Honor.

Q. General, your article in the Army and Navy Journal, you have prepared that yourself?

A. That is not a fair question.

Q. Why, I didn't mean to be unfair, but do you approve [292] the views expressed in that?

Mr. Ennis: Which article is this? (Mr. Anthony shows Mr. Ennis a photostat.)

Q. Do you recognize this as your article? (Handing witness a photostat.)

A. Yes, I do.

Q. And you believed the statements that you made in this article at the time you stated them, did you not?

A. Yes.

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

Q. And you still believe them?

A. I'd have to refresh my memory on the statement to which you are going to refer.

Q. Well, you state here, for instance, about the Japanese:

"The dangerous and potentially dangerous aliens and citizens have been arrested and interned by the Army. The remainder have proved on innumerable occasions that they are loyal to America."

A. Well, of course, that's a statement, Mr. Anthony, of very general character. When you are writing an article such as that, it is impossible to go into all the details and say that so many thousands are loyal, so many thousands are suspected of being potentially disloyal, etc. I brought out in my direct testimony the opinion that I hold of the loyal Japanese, but I also reiterate that in this community I am positive that there are many potentially disloyal Japanese.

Q. Simply because of their racial ancestry?

[293]

A. No; that is one factor; but for the reason that we are constantly picking them up day after day and bringing them before our hearing board, and they admit that they wish Japan to win the war. We have never had a Japanese come up and tell another Japanese that he is disloyal. They will come and testify as to their character or their activity, but they will never impugn the loyalty of one of their own. And that does not happen with the Germans nor does it happen with the Ital-

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)
ians. our other enemies. Therefore, we have a right to be suspicious; and I, charged with security, it is my duty to exercise a super-abundance of caution.

Q. Getting back to why we can't try these offenses either under a Federal statute or Territorial statute, I believe you said the trouble in Federal Court was that there were political influences such as existed on the east coast of the United States.

A. I said influences, political or otherwise. I think that—

Q. Are you fearful of that in this area?

A. Always. I am fearful always of political influences because that is what life is. Our whole life is political. There is hardly a problem that comes up to be solved in this community that there are not pressure groups of all sorts; they come into my office every day.

Q. General, is there any reason, any fact that exists [294] down here that wouldn't make all of these things, as you say, fully applicable as to what ought to be done in California or Maryland or Pennsylvania?

A. I don't think I quite understand the question.

Q. As I understand you, the Military Commander must be able to have his orders carried out, and he can't be bothered with any other agency except something that he can order to do?

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

A. "Bother" is hardly the word to use, because that implies a disregard, a lack of respect on the part of the Military Commander. That is not true.

Q. Well, I didn't mean to imply anything.

A. Well, it was the word that you used.

Q. Well, you shouldn't brook any interference?

A. No, it isn't as strong as brooking any interference. It is adherence to the principle, Mr. Anthony, that where you charge a man with responsibility, you must give him the authority to exercise that responsibility. And if you refer to civil courts offenses which have been characterized as offenses by the Military Commander, you are placing, therefore, in the hands of another agent the enforcement of your regulations. And if he doesn't choose to enforce them the way you feel they should be enforced, your authority, therefore, is diminished and in time even nullified.

Q. Then you think the Western Defense Command was injured by that program in California? Is that the result [295] of that?

A. I don't care to express an opinion on that. I am dealing with the local situation.

Q. But you are dealing with it in such a general phase, General Richardson, it seems fully applicable to any other East or Southern Command, then, is that not a fact?

A. Yes, I do think this, that this Commanding General of the Eastern Defense Command was placed in a very embarrassing position by the ruling of the court in returning to the jurisdiction of

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)
the First Corps Area the citizen who was ejected,
or alien—I don't know whether it was a citizen or
an alien.

Mr. Anthony: May we have a 5-minute recess,
your Honor?

The Court: Yes. We will have a recess.

(A recess was taken at 10:27 a.m.) |

After Recess

Cross Examination

(continued at 10:40 a.m.)

By Mr. Anthony:

Q. General, is it your military judgment that
the present blackout is necessary for the defense
of these islands?

A. You mean in its modified form?

Q. The existing blackout regulations.

A. Yes.

Q. Do you know what the practice is in the
Gilbert and the Marshalls and Guadalcanal in re-
gard to blackout? A. Yes. [296]

Q. Could you tell us that without divulging any
secrecies?

A. Perhaps I answered a little too categorically.
I could not state with certainty what the conditions
are, but generally speaking there is no blackout.

Q. And the blackout that exists here exists in
places other than military and naval installations,
is that not a fact? A. Here?

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

Q. Here in Oahu?

A. Yes, the entire city is blacked out after 10 o'clock.

Q. The waterfront? A. No.

Q. Pearl Harbor?

A. No. They are allowed to have their lights because they have to work. It is in the prosecution of the war.

Q. Now, when the fleet pushes farther west, as we are now informed they are doing in Palau, as I understand you the imminent danger of invasion of Hawaii increases? That is your testimony?

A. No, I did not say that. I said that I would not argue the question of the imminent danger of invasion. I say that the danger of an attack on Hawaii is always imminent and impending, and that danger increases when the fleet is here in port. It is much greater when the fleet is in port than when it isn't.

Q. Well, when the fleet is in port, are the restrictions [297] on the blackout and other regulations of civilians increased any?

A. I don't think I should answer that question, Mr. Anthony. I don't think it would do any good to answer that question.

Q. Well, if that is your judgment, we'll accept, the Court will accept that, I think. You prefer not to answer that question?

A. I would prefer not to answer that question. I might modify that by saying—

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

Q. I don't want anything that you feel, as Military Commander in this area, you shouldn't say.

A. We have to be alert.

Q. General, are you familiar with the Biennial Report of the Chief of Staff of the U. S. Army, covering the period of July 1, 1941, to June 30, 1943?

A. I know that the book exists and I have read it, parts of it. I could not say that I was thoroughly familiar with it.

Q. General Marshall tells us in this book that the war is in, as he describes it, five phases. Are you familiar with that part at all?

A. No, but if you will refresh my memory—

Q. Well, I will refresh your memory. The first phase he treats, General Marshall says—and this is in his report [298] to the Secretary of War:

“In my first report, which covered the period July 1, 1939, to June 30, 1941, events were treated in two phases. The first phase included the fall of France.”

Then he goes on to say:

“The second phase commencing with the Battle of Britain and terminating with the German declaration of war against Russia.”

Then he goes to what he calls the third phase, which brought to an abrupt conclusion the Japanese attack of December 7, 1941. The fourth phase, the complete mobilization of the power of the United States, and the fifth phase, which he says we are in now, and this is what he says:

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

"The fifth phase in which we are now engaged involves the launching of Allied military power against our enemies, in a series of constantly increasing offensive blows until they are beaten into complete submission."

"You agree with that analysis of the stage of warfare that we are in at the present time?"

A. Yes, we are engaged now in attacking our enemies.

Q. General Marshall also says:

"Immediately after Dunkirk the British Isles were in effect defenseless insofar as any organized and equipped ground forces were concerned. Practically all their field Army and equipment had been lost, and an immediate invasion was threatened."

Would you say General Marshall uses that expression accurately in that connection, the situation of the British after Dunkirk?"

A. It would be impossible for me to state just what General Marshall had in mind when he made that statement. [299]

Q. Well, presumably he is a soldier like yourself and used to precise military terms, is he not?

A. He is speaking very broadly.

Q. Would it be of any significance to you, as an expert military commander, to know that no place in either the Army's or Navy's description of December 7th attack that incident is referred to as anything other than an attack or an assault?

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

A. I haven't analyzed the reports to that extent.

Q. Well, have you ever seen a military report which has treated the raid of December 7, 1941, other than an assault or a raid, as distinguished from an invasion?

A. It must have been in the mind of Governor Poindexter that it was an invasion when he invoked the provisions of the Hawaiian Organic Act and came down to General Short and turned over to him the powers of the Government.

Q. Well, at that time we were hearing rumors that parachute troops were landing in Manoa Valley, General. Maybe that's what the Governor had in mind.

A. I have no idea what he had in mind.

Q. Have you examined the proclamation of General Short and Emmons?

A. I have.

Q. It's a fact that they referred to that opening of the war as an attempted invasion, isn't that so?

A. There is nothing that I know of in the law that specifies the degree of the invasion or the degree of imminence. [300]

Q. I am just asking you about the fact now. We will talk to the Court about the law. That is a fact, they called it an attempted invasion, both Generals?

A. I would have to refresh my memory.

Q. Well, we have it right here, General.

A. If they said it, it is there; that's all there is to it.

5

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)°

Q. This is a very bad copy, General. (Handing the witness a file of papers.) That's a proclamation of General Short of December 7, 1941. If you can examine that paragraph that I have indicated here—in that proclamation, General Short refers to the many means of attack by the enemy and a possibility of invasion. Do you think that he was using that expression accurately at that time?

A. No, I do not think so.

Q. And that was an accurate description of what was taking place out here on December 7th?

A. If that was General Short's idea, I presume it was accurate.

Q. It was reaffirmed by General Emmons when he took over this command.

A. I am in no position to pass judgment on their judgment at that time, but I presume that it was accurate.

Q. They had complete knowledge of the facts, presumably? A. Presumably.

Q. Being here. At the present time we have definite [301] air superiority in the Central Pacific area, do we not? A. I believe that we have.

Q. And is this report of General Marshal accurate in referring to this theatre: (Showing witness a book)

“Air superiority was demonstrated by a loss ratio of four to one in our favor.”

A. If General Marshal stated that, I am sure that it was based upon accurate intelligence and information.

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

Q. Are you able to give us any closer appraisal as to what the air superiority is at the present time? This was dated June 30, 1943. A. I am not.

Q. Have we increased our air superiority over the Japanese since June 30, 1943?

A. Yes. But you must remember that that isn't referring to the whole Pacific area, unless I am mistaken.

Q. Well, I'll read the paragraph, if you'd like to hear it:

"The United Nations in the Pacific Theatre——"

Now, what does the General mean?

A. He refers to everything, including General MacArthur's area.

Q. That's what I thought.

"——now possesses more secure positions from which to counter Japanese offensive ventures. Also, Commanders and troops had secured valuable experience in battle. Unified commando arrangements have welded sea, air and ground forces into efficient fighting teams. Air superiority was demonstrated by a loss ratio of four to one in our favor. And a more complete [302] control of the sea made possible by the skip bombing tactics perfected in the southwest Pacific by General Kenney's airmen."

General Marshal is talking about the entire theatre, is he not, the entire Pacific theatre?

A. It would seem so.

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

Q. General Richardson, getting back to our system of provost courts, is it fair to say that the reason that you do not desire to have military regulations enforceable either in this Court or in Territorial courts is that you do not have confidence in the judges who would administer the regulations?

A. Oh, by no means, by no stretch of the imagination. I would like to make that just as emphatic as possible. My whole position in this matter is that, having responsibility, I must have the authority to enforce my orders. And, inasmuch as the laws of the Territory and the laws of the Federal Government do not characterize as offenses the offenses which in this Territory are considered essential to security, and the violation of which must be punished quickly, then we must have some means, some military tribunal at my disposal to handle those cases in order to enforce my authority. And, as I repeated, and I state again, that if it were possible for me to transfer, to eliminate the provost courts and return that authority to the civil courts, I would be the first to advocate it. I have studied that problem for the last three months. When I first approached it, I thought that I would be able to do it. But after many conferences on the subject, I came [303] to the conclusion that I would be weakening my authority. I am faced here with a reality. I am not faced here with academic questions. And if I sense the feeling of this community correctly, enforced by the senti-

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)
ment and feeling of our Nation as a whole, we are in no mood to have another Pearl Harbor.

Q. What do Military Courts have to do with military disaster, General Richardson?

A. It has a ~~great deal~~ to do with its repetition, because it allows the Commander to so enforce his orders as to instill into the offenders a fear of violation thereof.

Q. Well, the raid on Pearl Harbor had nothing to do with the civil population, did it, General Richardson?

A. Not at that particular time. Remember, we were not at war when the raid occurred.

Q. No, but I am just trying to find out how you relate those two things.

A. Let me try and explain it again. I can understand that it is very difficult for a layman to appreciate what responsibility in this area means, but I know that we have here thousands and thousands of American boys in the services who have given up a lot of their civil liberties, too. I have renounced a great many of my civil liberties in donning the uniform. And you must remember that in this area all of these young men, officers and men, and women, too, who are serving in the Armed Forces, they willingly gave up those because down in their hearts they know it is right. Now, it may be against [304] academic questions for a military commander to have a tribunal in a civil community such as this, which is a part of our Territory, to enforce his orders. But we are in a very special

(Testimony of Lt. Gen. Robert C. Richardson, Jr.) position here on the Islands of Hawaii. As I have stated, we are in the combat zone; we are in an active theatre of war; we haven't got a homogenous population, we have a heterogeneous population with all sorts of affinities and loyalties which are alien in many cases to the philosophy of life of the American Government. And these boys out here in the defense area are entitled to security. Our fleet is entitled to security, without any academic questions entering into it at all.

We are faced with reality, and, as the motto of the D.A.R. is, "Eternal Vigilance Is The Price Of Liberty."

I cannot, as a soldier, renounce my duty or what my conscience dictates in order to carry out the mission of the Commander-in-Chief, Admiral Nimitz. And I know this, too, that the people on the mainland feel the same way, that this place shall be secure. And they would never forgive any let-down in regulations or measures to insure their security. And they are out here in this area, these soldiers, and they, too, as I say, have renounced their liberties and they are suffering a great many spiritual wounds, separated as they are from their families, as well as flesh wounds.

And I feel that you are trying to weaken my authority out here, that you are trying to take away from me the measures that will insure the security of these islands by the elimination [305] of these provost courts and the abolition of this partial and

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)
very mild form of martial law which in no way interferes with the activity of this community.

Q. All I am trying to do, General Richardson, is to give this boy here the kind of a trial that the Constitution and laws of the United States say he is entitled to; that is all I am trying to do.

A. He has gotten as fair a trial as thousands of soldiers in the Armed Service who appeared before the summary courts, the one-man court. He committed a military offense. He didn't commit a civil offense. And therefore he goes before a military tribunal.

Q. You make no distinction between your Governmental or political mission and the military mission? It is all one, so far as you are concerned?

A. My mission is not political. My mission——

Q. I mean political in the highest sense, Governmental.

A. Well, if you want to put it in the intellectual sense, there is a certain affinity.

Q. Yes. You make no distinction? A. / No.

Mr. Anthony: I think that is all.

Redirect Examination

By Mr. Ennis:

Q. General Richardson, Franklin D. Roosevelt, in his [306] Alien Enemy Proclamation of December 8th, giving authority to deal with aliens of Japanese ancestry, stated:

“As President of the United States, and as Commander-in-Chief of the Army and Navy of

(Testimony of Lt. Gen. Robert C. Richardson, Jr.) ,
the United States, I do hereby make public
proclamation to all whom it may concern, that
invasion has been perpetrated upon the terri-
tory of the United States by the Empire of
Japan."

From the military point of view, do you agree with
that statement? A. Yes, I do.

Q. General Richardson, you referred to certain
litigation on the east coast of the United States.
Do you know whether that area was an active
theatre of war?

A. At that time it was classified as a theatre
of operations.

Q. Not an active theatre of war? A. No.

Q. Of course, the population—

A. It was a potential theatre of war.

Q. It does not contain the Japanese population
that you have here. Now, General Richardson,
based upon your study of the matter, and having
in mind your military responsibility for the mili-
tary security of this Territory, is it your opinion
that the public safety requires the modified form
of martial rule which exists here, and in particular
provost courts for the military offenses which were
declared in your General Orders, and in particular
again the offense of an attack on a sentry, [307]
which is here involved.

A. Ever since my incumbency as Military Gov-
ernor, I have given the most careful study to the
possibility of eliminating this modified form of

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)
martial law and the provost courts. I did that for a number of reasons. First, I wanted to carry out, if I could, the directive of the President, which expressed the thought and idea when he approved the proclamation that gradually there would be a return to civilian control of the civilian functions. Secondly, I wanted to do it, if I could, for the reason that I have many other duties besides looking after some of the civilian population. And also because fundamentally I believe that it is right, that it should be, if possible, in the hands of the civilians.

I am an American. I think I understand American tradition, American law. And I would be the first to get up and say, the time has now come to renounce this form of modified martial law, if I conscientiously could do it. But I do not feel that I can conscientiously do it and carry out my mission, which has been assigned to me for the security of these islands. I feel that I must have that control that is necessary to insure the safety and security of Hawaii, which involves the safety and security of the fleet, upon which the fate of this Nation depends.

Q. One last point I'd like to clear up, General. Despite the increase in the United States fleet, and any increased protection we may have here against an attack by the Japanese, [308] is it your testimony that carrier-borne Japanese planes could get over these islands despite all protective measures we might take?

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

A. Absolutely. We have taken the utmost precautions for their detection, but they are not infallible and they have very definite limitations. Witness, for example, the marvelous protection that Germany has. Yet, despite that, the English and the Americans penetrate into German territory, and vice versa, the Germans into England. It seems to me, if I may add, that the primary consideration in viewing any of these matters is the prosecution of the war without interruption to a successful termination. And that every act of the Military Commander should be viewed whether it forwards that object or is hindering its accomplishment. I say, and give it as my judgment, that if we remove from the authority of the Military Commander the power which is given to him under this modified form of martial law, we hinder the successful accomplishment of the war.

Mr. Ennis: That's all of redirect. Any further recross?

Mr. Anthony: No. That is all.

Mr. Ennis: Thank you.

(Witness excused.)

Mr. Ennis: Admiral Nimitz, will you take the witness stand, please? [309]

ADMIRAL CHESTER W. NIMITZ,

U. S. Navy, a witness in behalf of the Respondent,
being duly sworn, testified as follows:

Direct Examination

By Mr. Ennis:

Q. Admiral Nimitz, will you state your full name and your present official position?

A. Chester W. Nimitz, Commander-in-Chief Pacific fleet and Pacific Ocean areas.

Q. Now, Admiral Nimitz, your affidavit annexed to the return and answer in this case, sworn to on March 24, 1944—I will just state this to shorten up the qualifications—states that you were graduated in the Naval Academy in 1905 and have been in the U. S. Navy since, occupying different positions both at sea and in the Navy Department.

A. That is correct.

Mr. Ennis: Do you admit the qualifications as they appear in the affidavit?

Mr. Anthony: Yes, we admit that.

Mr. Ennis: We'll admit that, then. Admiral, will you state in a general way, then, what your duties as Commander-in-Chief of the Pacific area are?

A. To prosecute the war in the Pacific Ocean areas in accordance with general directives from the Joint Chiefs of Staff. [310]

Q. And in the discharge of those duties, have you made yourself familiar with enemy actions in the Central Pacific area?

A. To the best of my ability, yes.

(Testimony of Admiral Chester W. Nimitz.)

Q. Will you state, Admiral Nimitz, in a general way the strategic position of this Territory as part of your general command?

A. The Hawaiian area constitutes the only base for the Navy that we have in the Pacific Ocean at the present time. It has the greatest importance to the fleet and to the Army for operations to the westward. Anything that is injurious to this area is prejudicial to our conduct of the war.

Q. Do you believe, Admiral Nimitz, as a military matter or as a naval matter, that the Japanese enemy might or could attack these islands?

A. Yes, they could. It is still within their capability to make carrier attacks behind the front, in spite of the daily searches that we make. We have never ceased, since December 7th, to search the areas from which we think those attacks are likely to come. Until the last Japanese carrier is destroyed, that capability will exist.

Q. Admiral Nimitz, will you turn and examine the map which is on the easel here in Court. Was this map of the Pacific Ocean prepared in your headquarters? A. Yes, it was.

Q. Will you state from the map and from the legend which [311] you hold in your hand, which describes the meaning of the red and blue circles around the islands, the method in which an attack by the Japanese forces might occur?

A. First of all, I will describe the area which it is possible for us to cover by search; from areas

(Testimony of Admiral Chester W. Nimitz.)

which we control, this line here. (Indicating on map)

Q. The outer blue line?

A. The outer blue line gives the area which we can cover by aircraft search from bases in the continent of the United States and in the Aleutians. This inner blue line around the Hawaiian chain that goes up as far as Midway is the area in which it is possible for us to cover by search from bases in the Hawaiian chain.

Q. That is air search?

A. Air search. This wide red line here represents the area or the line of position from which Japanese aircraft can launch an attack on objectives. This one here on Midway, this one, French Frigate Shoals, and from here on the Hawaiian area—

Q. That's the red line around all of the Hawaiian Islands?

A. The red line around all of the Hawaiian Islands. These small circles around Midway, around French Frigate Shoals, and around the chain from Kauai to Hawaii represent the line from which submarines can launch planes to attack or reconnoiter the Hawaiian Islands. These lines here with arrows indicate [312] the directions from which carrier attacks may approach the islands.

Q. And those lines run between to some extent the areas of search by plane?

A. Yes. If the Japanese wish to recover their aircraft, they must come within this inner red line here. If they are willing to make an all-out attack

(Testimony of Admiral Chester W. Nimitz.)

and not attempt to recover their aircraft, they can attack from the line out here.

Q: That faint outer red line? A: Yes.

Q: And this map and this legend were prepared at your headquarters?

A: Prepared in my headquarters.

Mr. Ennis: I offer the map and the legend explaining the circles in evidence. Any objection?

Mr. Anthony: No objection.

The Court: Received in evidence as Exhibit 12.

(Respondent's Exhibit 12 was received in evidence.)

[Respondent's Exhibit No. 12 is set out in full as Respondent's Exhibit No. 9, at page 538-a of this printed record.]

By Mr. Emmons:

Q: Admiral Nimitz, in addition to the possibility of an attack by carrier-based planes, are there other military factors, major factors to be considered in determining the possibility of an attack by the Japanese on this Territory?

A: Yes. The Japanese can land commando raiders, espionage parties, in spite of any reasonable preventive efforts that we make. And the information that they might [313] possibly obtain would be, in my opinion, could be more injurious to our cause than if they came to these islands and established a beachhead on one of them. The information that they might obtain as to prospective movements of our fleet, the presence of our fleet in these waters, or its absence, the deductions that might be made from the information they pick up

(Testimony of Admiral Chester W. Nimitz.)

mingling with the Japanese of the community might very well cause some of our operations in the far west, far westward of here, to be unsuccessful.

Q. Well, in other words, do you agree with General Richardson's testimony that protection of these Naval operations to the westward from premature disclosure is a vital factor in your operations?

A. It is of the utmost importance, and the security against espionage activity in these islands is of the utmost importance.

Q. Admiral Nimitz, having in mind your duties here and your responsibility, and from your study of the situation, would you state whether or not, in your opinion, there is imminent danger of invasion of the Territory of Hawaii by the Japanese?

A. Invasion by sea-borne troops in sufficient numbers to seize a bridgehead, no. I consider it neither imminent nor probable. But invasion by stealth, by submarine, commando raids, espionage parties, I consider it not only probable but imminent. It is constantly impending. [314]

Q. And what is your view on invasion by carrier-borne aircraft?

A. I cited that in a previous answer, that it is possible, if the Japanese wish to take the risk; they have sufficient carriers and sufficient planes to make an attack on these islands similar to the one that they made on December 7th.

Mr. Ennis: You may cross examine.

Mr. Anthony: No questions.

Mr. Ennis: That is all, Admiral Nimitz.

(Witness excused.)

Mr. Ennis: May I have a recess to confer with Counsel, your Honor?

The Court: Yes. We will take a recess.

(A recess was taken at 11:17 a. m.) [315]

I, Albert Grain, Court Reporter, U. S. District Court, Honolulu, T.H., do hereby certify as follows:

That I am the Official Court Reporter of the above-named court;

That the foregoing are true and correct copies of testimony taken by me and transcribed by me in Habeas Corpus No. 298, In the matter of the application of Lloyd C. Duncan for a Writ of Habeas Corpus, held in the above-named court, before the Hon. Delbert E. Metzger, as follows:

April 5, 1944 Hon. Harry Steiner

April 5, 1944 Hon. Albert M. Cristy

April 6, 1944 Gustaf K. Sproat

April 7, 1944 Hon. Ingram M. Stainback

April 7, 1944 Capt. J. Frank Wickhem

April 8, 1944 Capt. J. Frank Wickhem

April 8, 1944 Robert K. Murakami

April 11, 1944 Robert K. Murakami

April 11, 1944 Lt. Gen. Robert C. Richardson, Jr.

April 11, 1944 Admiral Chester W. Nimitz

May 8, 1944

ALBERT GRAIN,

Official Court Reporter. [316]

[Title of District Court and Cause.]

EXCERPT

From the above-entitled matter held in the U. S.
District Court, Honolulu, T. H., on April 21,
1944,

Before

Hon. J. Frank McLaughlin Judge.

The Court: I will make a ruling at this time which will dispose of this case, and will later file a written opinion.

I am satisfied from my knowledge of the evidence which is in this case, limited though that knowledge is at the moment due to the fact that I haven't had time to digest all of the exhibits any more than Counsel have, but from what you have informed me of it, and from my knowledge of certain portions of it—having read certain portions of the Duncan case—and from your arguments I am satisfied that it is not necessary in this case for this Court to decide the question as to whether or not in August, 1942, the existence in this Territory of martial law was or was not valid. [317]

It seems to me that there is only one issue in this case, that can be disposed of with ease. That issue is: Did the Provost Court of Honolulu in August, 1942, have jurisdiction over the subject matter and over the person in the White case? As was remarked by District Judge Wyche, of the District Court of Virginia, Eastern District, in the case of McCune vs. Kilpatrick, decided December 28, 1943, found in 53 Federal Supplement, 63:

"A civilian is presumed not to be a person subject to military law, and the party asserting military jurisdiction over him has the burden of proving such jurisdiction, and must point to a valid Federal statute which confers it."

Some portions of that quotation may not be strictly applicable to this case, but it is absolutely true that under the laws of the United States of America the military claiming jurisdiction over a civilian must be able in point of law to justify that jurisdiction. Here justification appears to be a declaration on December 7, 1941, by the Governor of the Territory. And, so far as by that declaration he declared martial law to be in existence, this Court is of the opinion that he had, as of that day and date, ample justification in placing the Territory under martial law.

But, in going further, as he did in the fourth from the last paragraph of that proclamation, and saying in these words,

"And I do further authorize and request the said Commanding General, Hawaiian Department, and those subordinate military personnel to whom he may delegate such authority during the present emergency and until the danger of invasion is removed, to exercise the powers normally exercised by judicial officers and employees of this Territory, and of the counties and cities therein, such other and further powers as the emergency may require,"

[318] that the Governor of the Territory was then

acting beyond the scope of the powers conferred upon him by the Congress of the United States, and said abdication of his powers as Governor and purported delegation of powers that he did not have is absolutely and wholly invalid; consequently founding its authority to try the White case upon that invalid delegation of authority from the Governor of the Territory, and purporting thereunder to do what the Governor himself could not do, it is the judgment of this Court that in the White case the Provost Court of Honolulu had no jurisdiction over the subject matter involved in the White case, nor over the person of Mr. White, and in purporting to exercise jurisdiction over both the subject matter and the person that that Court deprived Mr. White of his Constitutional rights as a citizen of the United States of America.


Accordingly, though this opinion will be amplified by a written opinion later to be filed, it is now the judgment of this Court that the writ heretofore issued in this case be made permanent and the defendant discharged.

Mr. Ennis: May I have an exception to the decision making the writ permanent, your Honor?

The Court: You may.

Mr. Ennis: As I take it, since there is going to be an opinion, it will not be necessary at this time under Rule 124 to note an appeal in open court.

The Court: Well, your guess as to that is as good as mine, [319] and I would advise you to note it out of an abundance of caution.



Mr. Ennis: Well, pursuant to Rule 124 of this Court, I note an appeal to your Honor's decision.

The Court: Very well.

Mr. Ennis: And, in view of the fact that there will be an opinion later, may I request your Honor at this time a 90-day period allowed under the rules of civil procedure to perfect the appeal?

The Court: You may have that.

Mr. Ennis: Thank you, your Honor.

~~The Court: The Court will stand adjourned.~~

[320]

I, Albert Grain, Court Reporter, U. S. District Court, Honolulu T. H., do hereby certify as follows:

That I am the official Court Reporter of the above-named U. S. District Court;

That the foregoing is a true and correct excerpt from the proceedings taken by me and transcribed from my stenographic notes in Habeas Corpus No. 300, in the matter of the application of Harry E. White for a writ of habeas corpus, held in the above-named Court on April 21, 1944, before the Hon. J. Frank McLaughlin, Judge.

May 8, 1944.

ALBERT GRAIN [321]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK, U. S. DISTRICT
COURT TO TRANSCRIPT OF RECORD
ON APPEAL

United States of America,
Territory of Hawaii—ss.

I, Wm. F. Thompson, Jr., Clerk of the United States District Court for the Territory of Hawaii, do hereby certify the foregoing pages numbered from 1 to 321, inclusive, to be a true and complete transcript of the record and proceedings had in said court in the above entitled cause as the same remain of record and on file in my office; and I further certify that I am including with said record the following exhibits:

Petitioner's Exhibit "A" to "Q", inclusive,

Respondent's Exhibits Nos. 1 to 16, inclusive.

that the costs of the foregoing Transcript of record on appeal are \$50.45 and that said amount has been charged by me against the United States. [322]

In Testimony Whereof, I have hereto set my hand and affixed the seal of said Court this 9th day of May, A. D. 1944.

[Seal]

WM. F. THOMPSON, JR.,

Clerk, U. S. District Court,
Territory of Hawaii.

[Endorsed]: Filed May 12 1944. [323]

PETITIONER'S EXHIBIT "A"

Library of Hawaii

ARMY AND NAVY REGISTER

ADMIRAL HALSEY'S VIEWS

Admiral Wm. F. Halsey, jr., home on leave from the South Pacific, at the home of his daughter, Mrs. Preston L. Spruance, in Delaware, stated his opinion that the way to win the war was beat Hitler and then get the "stuff" out to the Pacific so we can polish off the Japs. He is quoted as saying:

"While the Japs seem to have enough equipment, the Jap air force has definitely deteriorated—some of their flyers are mere kids, lacking air training and air experience. We have captured some of their 18-year-old pilots. We outclass the Japs in planes and personnel.

"Air power alone is not enough. It takes a fighting man on the ground to help win the fight. You can't win with ships and planes alone nor with ground troops alone. It's the combination.

"Island hopping is not the best way to win, of which all fighting men are convinced. In a small way we have gone around some of the islands. This has worked out well."

As to unified command, Admiral Halsey said, "Everybody has an area for which he is responsible. My directions come from Gen. MacArthur, and our relations are most cordial. I see him about once every two months, and I never received finer treatment from any man."

With regard to "where is the Jap fleet?" the admiral said that, while units of it "are all over the Pacific," it is concentrated to a certain extent at Truk in the Carolinas and off the mainland of Japan, and added:

"If it came to a show-down fight between their fleet and ours, the American fleet would be afloat and theirs at the bottom of the sea, where all Jap ships should be.

"When you begin to lick a Jap and lick him properly, he may then begin to doubt he is the son of the Sun God. When he is well fed and well uniformed he is tough, like any other rat. But when they are hungry and can't get food they are easy to beat—like other rats."

[Endorsed]: Filed 4-20-44.

PETITIONER'S EXHIBIT "A-1"

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 41

(For release at
1700 (HWT), Thursday,
30 March 1944)

Strong Pacific Fleet Forces, at dawn Wednesday, 29 March, (West Longitude Date), initiated heavy attacks on the Japanese-held Palau Islands. After discovery of approach of our forces by enemy planes searching from their bases in the Carolines and New Guinea, their ships were observed fleeing the area before our units could reach attack positions. Our attacks continue. No further details are as yet available.

C. W. NIMITZ,
Admiral, U. S. Navy,
Commander in Chief, U.S.
Pacific Fleet and Pacific
Ocean Areas.

Petitioner's Exhibit A-1—(Continued)

Background Information for the Press

Palau Islands are a group of 200 small, heavily wooded, volcanic islands at the Western end of the Caroline chain. Babelthuap Island, the largest in the Palau group, is 142 square miles in area, the second largest land mass in the Carolines and exceeded in size only by Ponape.

The town of Koror, just south of Babelthuap Island is the seat of Japanese administration of the 1500 Caroline Islands which, for administrative purposes, are divided into four districts—Palau, Yap, Truk and Ponape.

The Spanish explorer Magellan came into the South Pacific in 1521, stopping at Guam and the Philippines, but the Palau group was not discovered until 1712 when a band of Spanish missionaries landed on one of the islands. The group was "re-discovered" in 1783 by an Englishman, Capt. Wilson, whose ship the Antelope belonged to the East India Company.

Spain held loose control over the Palau Islands until 1898 when, at the end of the Spanish-American war, Spain sold the Carolines and the Marshalls to Germany. In 1914, however, when Japan joined the Allies to fight Germany, Japan moved in and took over. At the end of the first World War, she was given a Class "C" mandate over the islands.

The natives of the Palau group are Micronesians who are smaller and darker than Polynesians. In 1937 there were 6587 natives, 9530 Japanese and 18 foreigners registered in the Palau Islands. Before

Petitioner's Exhibit A-1—(Continued)

the war there were two Christian schools in Palau.

Palau Islands lie within one of the rainiest areas of the Pacific, the average total rainfall being some 180 inches per year. Destructive typhoons often hit these islands, flattening houses and uprooting trees. Many installations in the Palau group were destroyed by a great typhoon in 1927.

—2—Palau Background Material

Pigs, cows and chickens were imported by the Spaniards and are raised for food. Taro, sweet potatoes, rice, bananas and papayas round out the native diet. There are no poisonous snakes and the islands are free from the malaria-carrying mosquito.

The principal crop is coconuts and much copra is exported each year. Fishing is also important and tunny-fish and bonita are dried and shipped to Japan for food. Many tortoise shell objects are made by the natives.

The Palau islands are well-known as the home of the Mikimoto culture pearls. Grains of sand are inserted within the shells of young oysters and at the end of nine years, the oysters are opened and the full-grown pearls removed. Before the war, Mikimoto culture pearls were sold in the finest shops of New York, Paris and London.

The island of Anguar, lying to the south, is one of the most important islands commercially. Eight square miles in area, it is one huge phosphate mine whose contents are shipped to Japan for fertilizer and munitions-making. In 1934 some 60,000 tons were shipped to Japan and it is estimated that

Petitioner's Exhibit A-1—(Continued)

2,400,000 tons comprise the deposit. In pre-war days, Japan obtained one-fifth of her entire consumption from this island.

In the Palau group, as well as the Caroline and Mariana Islands are traces of earthworks, walls and canals which were apparently built by ancient people of superior intelligence and organizing ability. The secret of these ruins has never been solved.

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 40

(For Release at 1200 (HWT),
Wednesday, 23 February 1944)

1. The conquest of Eniwetok Atoll was completed on the evening of 22 February (West Longitude Date) with the capture of Parry Island.

The enemy garrison which defended the atoll is estimated at 3,000.

2. A strong Pacific Fleet task force, including several hundred carrier-based aircraft, struck Saipan and Tinian Islands in the Mariana group, on 22 February (West Longitude Date). Further details are not now available.

C. W. NIMITZ,

Admiral, U. S. Navy, Com-
mander in Chief, U. S.
Pacific Fleet and Pacific
Ocean Areas.

Petitioner's Exhibit A-1—(Continued)

United States

Pacific Fleet and

Pacific Ocean Areas

Communique No. 39

(For release at 1730 (HWT),
Monday, 21 February 1944).

Our forces have captured Eniwetok Island. Enemy resistance has been stubborn, and small pockets of troops are yet to be overcome.

Parry Island is being heavily attacked by our air and surface forces.

Preliminary reports indicate that our overall casualties in the capture of the Eniwetok Atoll as of last night are approximately 150 dead and 350 wounded.

C. W. NIMITZ,

Admiral, U. S. Navy, Com-
mander in Chief, U. S. Pa-
cific Fleet and Pacific Ocean
Areas.

United States

Pacific Fleet and

Pacific Ocean Areas

Communique No. 38

(For release at 1930 (HWT),
Sunday, 20 February 1944).

Our forces have landed on Eniwetok Island and now have possession of the western half of the island. The attack is being carried out by elements

Petitioner's Exhibit A-1—(Continued)
of the 106th Infantry supplemented by a unit of the
22nd Marines.

Except for Parry Island, the remainder of the
atoll is in our hands.

Casualties continue to be light.

C. W. NIMITZ,

Admiral, U. S. Navy,

Commander in Chief, U. S.
Pacific Fleet and Pacific
Ocean Areas.

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 37

(For release at 1200 (HWT),
Sunday, 20 February 1944).

The Pacific Fleet has returned at Truk the visit
made by the Japanese Fleet at Pearl Harbor on 7
December 1941, and effected a partial settlement of
the debt. The initial approach was undetected.

During attacks on 16 and 17 February (West
Longitude Date) our carrier planes destroyed at
least 201 enemy aircraft, 127 of which were shot
down in combat. More than fifty additional enemy
aircraft were damaged on the ground. There was
no enemy air opposition on the second day of the
attack.

Enemy surface ships sunk included two light
cruisers, three destroyers, one ammunition ship, one

Petitioner's Exhibit A-1—(Continued)

seaplane tender, two oilers, two gunboats, and eight cargo ships. Additional enemy ships probably sunk included one cruiser or large destroyer, two oilers, and four cargo ships.

Shore facilities on the principal islands, including airdrome runways and installations, were thoroughly bombed and strafed.

Our losses were 17 planes. None of our ships was lost, but one sustained moderate damage.

Admiral R. A. Spruance, U. S. Navy, was in overall command of the operation, and Rear Admiral Marc A. Mitscher, U. S. Navy, former Commanding Officer of the Hornet, directed the carrier air attack.

C. W. NIMITZ,

Admiral, U. S. Navy,

Commander in Chief, U. S.
Pacific Fleet and Pacific
Ocean Areas.

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 36

(For Release at 1300 (HWT),
Saturday, 19 February 1944)

Our forces have captured the enemy air base at Engebi and several other islands in the northern portion of the Eniwetok Atoll. Preliminary reports indicate our casualties have been light.

Petitioner's Exhibit A-1—(Continued)

Assaults on other portions of the atoll are proceeding according to schedule.

C. W. NIMITZ,

Admiral, U. S. Navy,

Commander in Chief, U. S.
Pacific Fleet and Pacific
Ocean Areas.

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 35

(For release at
1230 (HWT)).

The capture of Eniwetok Atoll has been undertaken by forces of the Pacific Ocean Areas. Army and Marine assault troops have landed and established beachheads.

The initial landings took place after strong preliminary attacks by carrier-based aircraft and by heavy ships of the Pacific Fleet. The troops went ashore under the cover of battleship gunfire and with the close support of low flying naval aircraft.

All forces participating are under the immediate command of Rear Admiral R. K. Turner. The amphibious forces are commanded by Rear Admiral H. W. Hill. The assault troops comprising the Twenty-second Marines and elements of the

Petitioner's Exhibit A-1—(Continued)

106th Army Infantry are commanded by Brigadier Gen. T. E. Watson, USMC.

C. W. NIMITZ,

Admiral U. S. Pacific Fleet,
and Pacific Ocean Areas.

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 34

(For Release at 1100 (HWT),
Thursday, 17 February 1944)

At daylight yesterday morning, 16 February (West Longitude Date), powerful naval task forces of the U. S. Pacific Fleet commenced an attack on the Japanese Naval Base at Truk with several hundred of our planes participating. No further details available.

C. W. NIMITZ,

Admiral, U. S. Navy,
Commander in Chief, U. S.
Pacific Fleet and Pacific
Ocean Areas.

Petitioner's Exhibit A-1—(Continued)

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 32

(For Release at 1230 (HWT),
Sunday, 6 February 1944)

Occupation of the Kwajalein Atoll is nearly complete.

Gugegwe, Bigej, and Eller Islands have been captured after moderate resistance, and several additional undefended islands occupied.

C. W. NIMITZ,

Admiral, U. S. Navy,
Commander in Chief, U. S.
Pacific Fleet and Pacific
Ocean Areas.

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 33

(For Release at 1230 (HWT),
Tuesday, 8 February 1944)

Organized resistance on Kwajalein Atoll has ceased, and its capture and occupation have been completed.

C. W. NIMITZ,

Admiral, U. S. Navy,
Commander in Chief, U. S.
Pacific Fleet and Pacific
Ocean Areas.

Petitioner's Exhibit A-1—(Continued)

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 29

For release at 1130 (HWT),
Thursday, 3 February 1944).

Our forces have captured Namur and several adjacent islands.

Resistance continues on Kwajalein Island, but we have landed troops and mechanized equipment in force and are proceeding with the annihilation of the enemy.

C. W. NIMITZ,

Admiral, U. S. Navy
Commander in Chief, U. S.
Pacific Fleet and Pacific
Ocean Areas.

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United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 30

(For release at 1730 (HWT),
Friday, 4 February 1944).

Operations at the Kwajalein Atoll continue satisfactorily.

Our forces have landed on Ebeye, north of Kwajalein Island. The landing was unopposed but resistance was encountered a short distance inland.

Petitioner's Exhibit A-1—(Continued)

from the beach. We have now occupied half the island.

Two small islands between Kwajalein and Ebeye have been occupied following neutralization of moderate opposition. Gugegwe and Loi Islands, north of Ebeye have been taken under attack by bombing and Naval gunfire, and the enemy is answering our fire.

Resistance on Kwajalein Island continues, but progress is being made. Our casualties continue to be moderate.

C. W. NIMITZ,

Admiral, U. S. Navy,

Commander in Chief, U. S.
Pacific Fleet and Pacific
Ocean Areas.

United States

Pacific Fleet and

Pacific Ocean Areas

Communique No. 27

(For Release at 1000 (HWT),
Tuesday, 1 February 1944)

Powerful forces of all types, commanded by Vice Admiral R. A. Spruance, U. S. Navy, have begun operations the objective of which is the capture of the Marshall Islands.

Following intensive preparatory bombardment of enemy installations by carrier-based aircraft and by battleships and light surface units, Army and Ma-

Petitioner's Exhibit A-1—(Continued)

rine assault forces have initially established beachheads on islands in the vicinity of Roi and Kwajalein Islands, in the Kwajalein Atoll. Installations on Wotje and Maloelap Atolls were heavily-bombarded by carrier aircraft and by surface forces.

All amphibious operations are commanded by Rear Admiral R. K. Turner, U. S. Navy. The assault troops are directed by Major General H. M. Smith, U.S.M.C. The landing attacks in the Roi Island area are being made by troops of the Fourth Marine Division, commanded by Major General Harry Schmidt, U.S.M.C. The landings are being effected in the Kwajalein Island area by troops of the Seventh Infantry Division, commanded by Major General Charles H. Corlett, U. S. Army.

Strong opposition is being encountered in both assault areas. Initial information indicates that our casualties are moderate.

Supporting air attacks are being made at Kwajalein, Maloelap, Wotje, Mille, Jaluit, Eniwetok and Wake by carrier task forces commanded by Rear Admiral M. H. Mitscher, U. S. Navy, by units of the Seventh Army Air Force, commanded by Major General Willis H. Hale, U. S. Army, and by units of Fleet Air Wing TWO commanded by Rear Admiral John D. Price, U. S. Navy. All shore based aircraft in the Gilberts are operating under the direction of Commander Aircraft, Central Pa-

Petitioner's Exhibit A-1—(Continued)

cific Force, Rear Admiral John H. Hoover, U. S. Navy.

C. W. NIMITZ,

Admiral, U. S. Navy, Com-
mander in Chief, U. S. Pa-
cific Fleet and Pacific Ocean
Areas.

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 26

(For release at 1900 (HWT), Sunday,
30 January 1944).

Our carrier task forces today continued their at-
tacks on Kwajalein, Roi, Maloelap and Wotje.

During the day surface forces bombarded the
same objectives while carriers extended their opera-
tions to include bombing of Eniwetok.

C. W. NIMITZ,

Admiral, U. S. Navy, Com-
mander in Chief, U. S. Pa-
cific Fleet and Pacific Ocean
Areas.

Petitioner's Exhibit A-1—(Continued)

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 31

(For Release at 1100 (HWT)
Saturday, 5 February 1944)

Kwajalein, Ebeye, and Loi Islands have been captured by our forces.

C. W. NIMITZ,

Admiral, U. S. Navy, Commander in Chief, U. S. Pacific Fleet and Pacific Ocean Areas.

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 28

(For release at 1100 (HWT),
Wednesday, 2 February 1944).

Our forces have captured Roi Island.

Landings have been made on Kwajalein and Namur Islands and the action is progressing favorably. On Namur the enemy has been contained in the extreme northern portion of the island, and at Kwajalein our troops are firmly established and are pushing the enemy back.

Continuous bombardments of beaches by our warships, planes, and landbased artillery enabled

Petitioner's Exhibit A-1—(Continued)

our forces to make landings on the three principal objectives with little resistance.

We have suffered no Naval losses and casualties are very moderate. It is now apparent that the attack took the enemy completely by surprise.

C. W. NIMITZ,

Admiral, U. S. Navy, Com-
mander in Chief, U. S. Pa-
cific Fleet and Pacific Ocean
Areas

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United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 24

(For Release at 1330 (HWT),
Thursday, 9 December 1943)

Strong forces of the Pacific Fleet attacked Nauru Island with carrier aircraft and ship bombardment on 8 December (West Longitude Date). Further details are not now available.

Liberators of the 7th AAF which raided the Taroa airdrome installations on the morning of 7 December were intercepted over Maloelap by eight enemy fighters. One fighter was shot down. Our

Petitioner's Exhibit A-1—(Continued)
planes suffered only slight damage. A Liberator of this force also bombed Mille during the same sortie.

C. W. NIMITZ, •

Admiral, U. S. Navy, Commander in Chief, U. S. Pacific Fleet and Pacific Ocean Areas.

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 25

(For release at 1600 (HWT),
Saturday, 29 January 1944).

Pacific Fleet carrier task forces have made attacks on Marshall Island bases today, including Taroa, Wotje, and Kwajalein.

C. W. NIMITZ,

Admiral, U. S. Navy, Commander in Chief, U. S. Pacific Fleet and Pacific Ocean Areas.

Petitioner's Exhibit A-1—(Continued)

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 20

(For release at 1130 (HWT),
Wednesday, 24 November 1943).

Betio island, Tarawa atoll, was captured shortly after noon 23 November, (West longitude date), following a desperate enemy counter-attack which was crushed by troops of the Second Marine Division. Remnants of the enemy are being hunted down on Apamama, Tarawa and Makin atolls. Seventh AAF Liberators continued diversionary attacks in the Marshalls.

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United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 23

(For Release at 1030 (HWT),
Wednesday, 8 December 1943)

Our carrier task forces which attacked enemy installations on Kwajalein and Wotje atolls on 4 December (West Longitude Date) destroyed 72 planes in the air, strafed and burned an undetermined number of medium bombers on the ground; and destroyed or damaged various ground installations on Kwajalein, Ebeye, Roi and Wotje islands.

At Kwajalein they sank two light cruisers, one

Petitioner's Exhibit A-1—(Continued)

oiler and three cargo transports, and damaged one troop transport and two cargo transports. At Wotje, one cargo transport was damaged.

Our forces, under command of Rear Admiral Charles A. Pownall, successfully fought off vigorous, prolonged aerial and torpedo and bombing attacks. Of one group of seven torpedo planes, six were destroyed by anti-aircraft fire.

One of our ships suffered minor damage. Our aircraft losses were light.

C. W. NIMITZ,

Admiral, U. S. Navy, Commander in Chief, U. S. Pacific Fleet and Pacific Ocean Areas.

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 22

(For release at 00 (HWT),
Monday December 1943).

Strong carrier task forces attacked the Marshall Islands on 4 December (West longitude date). Due to the necessity for radio silence details are not yet available.

C. W. NIMITZ,

Admiral, U. S. Navy, Commander in Chief, U. S. Pacific Fleet and Pacific Ocean Areas.

Petitioner's Exhibit A-1—(Continued)

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 18

(For Release at 1330 (HWT),
Monday, 22 November 1943)

Our troops have improved their positions on Tarawa and Makin atolls, but are still encountering considerable enemy ground resistance. We have landed on Apamama atoll. Liberators heavily bombed the airdrome area at Nauru Island on 20 November (West Longitude Date) and on 21 November Army Liberators continued diversionary attacks, in the Marshalls.

The central Pacific operations are being directed by Vice Admiral Raymond A. Spruance, U. S. Navy. The amphibious forces are under command of Rear Admiral Richmond K. Turner, U. S. Navy.

Landings were made on Tarawa by the Second Marine Division in command of Major General Julian C. Smith, USMC; those on Makin by troops of the 27th Infantry Division, commanded by Major General Ralph Smith, USA. Major General Holland McT. Smith, USMC, is in command of the landing forces.

Petitioner's Exhibit A-1—(Continued)

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 19

(For release at 11:30 (HWT),
Tuesday, 23 November 1943).

Our forces have captured Makin. On Tarawa, the Marines have consolidated their positions and are making good progress against enemy concentrations on eastern end of Betio island, with capture assured. The situation on Apamama is well in hand.

Raids are being continued against the Marshalls by carrier aircraft and Army Seventh Air Force Liberators.

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United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 8.

21 August 1942.

Since the initial successful landings in the Solomon Islands by U.S. Forces under the command of Vice Admiral Ghormley, a period of mopping up in order to consolidate our positions has been in progress. Japanese defenders took to the hills and jungle to escape from our forces. There have been daily skirmishes between U.S. Marine patrols and enemy detachments. In these actions both sides have suffered casualties.

Petitioner's Exhibit A-1—(Continued)

On August 19th the Marines with a loss of 6 killed and 13 wounded wiped out a Japanese detachment of 92 officers and men. Enemy resistance continued until the last man was killed.

On the night of August 20th the enemy landed a force of about 700 well equipped troops from high-speed boats outside of the Marines' lines, and attempted to break through. During darkness only hand to hand fighting was possible but with the breaking of day the Marines were able to maneuver. While one battalion held the front line another battalion moved to a flank and drove the then withdrawing Japanese to the beach. Action continued until late afternoon. Of the 700 Japanese, 670 are dead, the rest prisoners. Marine losses were 28 killed and 72 wounded.

The Marines in the Solomons, who are under the command of Major General Alexander A. Vandegrift, U. S. Marine Corps, have added another page to their history of outstanding achievement.

/s/ C. W. NIMITZ,

Commander in Chief, Pacific
Fleet and Pacific Ocean
Areas.

Petitioner's Exhibit A-1—(Continued)

United States

Pacific Fleet and

Pacific Ocean Areas

Communique No. 17

(For Release at
1100 (HWT), Sunday,
21 November 1943).

Army and Marine Corps forces, covered by powerful units of all types of the Pacific Fleet, have established beach heads on Makin and Tarawa atolls, Gilbert Islands; meeting moderate resistance at Makin and strong resistance at Tarawa. Fighting continues. During these operations Army Liberators made diversionary attacks in the Marshalls.

C. W. NIMITZ,

Admiral U.S. Pacific Fleet,
and Pacific Ocean Areas.

United States

Pacific Fleet and

Pacific Ocean Areas

Communique No. 16

(For release at
1200 (HWT), Wednesday,
17 November 1943.)

Late afternoon raids were made on enemy positions on Jaluit and Mille atolls, in the Marshall Islands and on Makin Island, in the Gilberts, on 15 November, West Longitude date, by Liberator bombers of the Army's Seventh Air Force.

Petitioner's Exhibit A-1—(Continued)

At Jaluit, many fires were started by our bombs in the hangars, shops and dump areas at the sea-plane bases on Imieji and Jabor Islands. Of the five ships anchored in the lagoon; one was left burning, three others were possibly damaged.

Several fires resulted from the Mille attack, but cloud conditions prevented accurate observance of damage at Makin.

No air interception was encountered in any instance. Anti-aircraft fire was intense at Mille, weak at Makin and at Jaluit. No damage was suffered by our planes or personnel.

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United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 15

(For Release at 2330 (GCT),
10 October 1943)

Supplementing Pacific Ocean Areas Communique No. 14, the following information is available concerning our operations against Wake Island:

The initial heavy and protracted attack made by carrier aircraft and ship bombardment, beginning at dawn on 5 October, West Longitude Date, was followed late the same afternoon by an attack by a group of Navy Liberator bombers led by Commander John T. Hayward, U. S. Navy, and on the morning of 6 October by a further carrier aircraft

Petitioner's Exhibit A-1—(Continued)

bombing by the force commanded by Rear Admiral Alfred E. Montgomery, U. S. Navy.

In the extended attacks our planes dropped 320 tons of bombs. An intensive bombardment by the ships combined to inflict considerable damage to enemy installations on Wake, Peale and Wilkes Islands. Enemy defenses were so neutralized in the initial bombardment that the heavy bombers encountered only weak and ineffective anti-aircraft fire and no air opposition in their low altitude bombing attack in the late afternoon of 5 October.

Our forces destroyed 30 or more enemy planes in the air and 31 on the ground. Many fires were started in the plane dispersal areas, shops, barracks, and storage areas throughout the three Islands. Two small vessels, one loaded with gasoline, were destroyed.

United States

Pacific Fleet and

Pacific Ocean Areas

Communique No. 15 (Continued)

Damage by enemy action to our ships and ship's personnel was negligible. We lost 13 planes in combat.

C. W. NIMITZ,

Admiral, U. S. Navy, Com-
mander in Chief Pacific
Fleet and Pacific Ocean
Areas

Petitioner's Exhibit A-1—(Continued)

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 14

For Release after
1200 (HWT) 6 October 1943.

A strong Pacific Fleet task force, commanded by Rear Admiral Alfred E. Montgomery, U S N, heavily attacked enemy held positions on Wake Island with carrier aircraft and ship bombardment commencing at dawn on 5 October 1943, West Longitude Date. Further details are not now available.

/s/ C. W. NIMITZ,

Admiral, U. S. Navy, Com-
mander in Chief, Pacific
Fleet and Pacific Ocean
Areas.

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 13

22 September 1943

Supplementing Pacific Ocean Areas Communique No. 12, the following information concerning our operations against enemy installations in the Gilbert Islands region during the night preceding and throughout the day of 19 September, East Longitude Date, is available:

Petitioner's Exhibit A-1—(Continued)

Attacks were made by carrier-based aircraft and by land-based Army and Navy aircraft from various bases in the Central and South Pacific areas.

More than 200 sorties were carried out by our planes against Tarawa, Makin and Apamama Islands, in the Northern Gilberts, and Nauru Island, west of the Gilbert group.

Damage to the enemy included: At Tarawa: Air-drome facilities heavily damaged, eight bombers destroyed on the runway, one small vessel sunk; at Makin; airbase damaged, three four-engine sea-planes and one other patrol plane destroyed; at Apamama: Enemy camp installations heavily hit; at Nauru: Damage to installations.

In addition to destroying aircraft on the ground, our forces shot down six Zeros, probably destroyed four others and damaged eight more fighters, and shot down two medium bombers.

Despite attempted interception by day and night fighters and intense anti-aircraft fire encountered, our losses totalled only four planes.

C. W. NIMITZ,

Admiral, U. S. Navy, Com-
mander in Chief, Pacific
Fleet and Pacific Ocean
Areas.

Petitioner's Exhibit A-1—(Continued)

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 12

For Release after 2200 (HWT)
18 September, 1943.

Strong Pacific Ocean Area forces today conducted heavy raids on the Japanese bases at Tarawa Island, in the northern Gilbert group, and on Nauru Island, west of the Gilbert group.

These operations were carried out according to plan during the night preceding and for a good portion of the day of 19 September, East Longitude Time.

Details of the operations are not immediately available.

/s/ C. W. NIMITZ,

Admiral, U.S. Navy, Commander in Chief, Pacific Fleet and Pacific Ocean Areas.

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 11

8 September, 1943.

A task force commanded by Rear Admiral Charles A. Pownall, U.S. Navy, attacked Marcus Island

Petitioner's Exhibit A-1—(Continued)

at dawn on 1 September, 1943, East Longitude Time. The first wave of the attack apparently caught the enemy completely by surprise. It is estimated that the attack, made in several waves throughout the day, destroyed 80 per cent of military installations on the island. Our losses totalled two fighters and one torpedo plane.

Some anti-aircraft fire was encountered by the initial wave, but was eliminated by succeeding attacks. Fires started throughout the island were still burning the day following the attack.

No enemy planes left the ground. Seven twin-motored bombers which were parked on the runway were destroyed by our fighters. Installations destroyed included hangars, fuel and ammunition storage, shops, and living quarters. The two landing strips were severely damaged by heavy bombs. A small tanker caught near the island was sunk by our bombers.

C. W. NIMITZ,

Admiral U.S. Navy, Com-
mander in Chief, Pacific
Fleet and Pacific Ocean
Areas.

Petitioner's Exhibit A-1—(Continued)

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 10

November 16, 1942

By far the strongest Japanese attempt to date to recapture Guadalcanal has been completely frustrated by the aggressive action of Vice Admiral W. F. Halsey and his forces in the South Pacific Area.

The enemy transport force was almost annihilated, so that little if any assistance, reached the Japanese land forces on Guadalcanal. Major General A. A. Vandegrift, U.S.M.C. with his Army, Navy and Marine Corps forces continue to have the situation well in hand.

The strong escorting and bombardment forces of the enemy, comprising a large portion of his fleet, were attacked by our surface forces in two heavy night engagements in the vicinity of Guadalcanal. They were also severely damaged by our aircraft, submarines and motor torpedo boats.

As a result all enemy forces were either destroyed or driven back and a major victory was obtained by our gallant forces.

Reports of own and enemy losses have been announced by the Navy Department.

C. W. NIMITZ,

Admiral, U. S. Navy, Com-
mander in Chief, Pacific
Fleet and Pacific Ocean
Areas.

Petitioner's Exhibit A-1—(Continued)

United States Pacific Fleet and

Pacific Ocean Areas

Communique No. 9

15 September 1942

This afternoon our Army Air Forces in Alaska delivered a most successful attack on enemy shipping and shore installations at Kiska.

Enemy ships and planes in the harbor received direct bomb hits and repeated strafing. At least two naval vessels were sunk. Five enemy fighting planes were shot down in flames and one 4-engine patrol plane was burned on the water.

Installations and storage dumps around the harbor were repeatedly bombed and strafed, resulting in large fires and explosions.

Enemy personnel casualties are estimated at around 500 whereas we lost two pilots as a result of two P-38's colliding in midair.

C. W. NINITZ,

Admiral, U.S. Navy, Commander in Chief, U.S. Pacific Fleet and Pacific Ocean Areas.

Petitioner's Exhibit A-1—(Continued).

United States

Pacific Fleet and

Pacific Ocean Areas

Communique No. 21

(For Release after 1100 (HWT)

Wednesday, 1 December 1943)

Preliminary reports of the Gilbert operations indicate that our landing forces suffered the following approximate casualties:

At Tarawa:

Killed in action.....1,026

Wounded in action.....2,557

At Makin:

Killed in action.....65

Wounded in action.....121

At Apamama:

Killed in action.....1

Wounded in action.....2

— 30 —

United States Pacific Fleet and

Pacific Ocean Areas

Communique No. 7

21 August 1942.

A force of Marines of the U. S. Pacific Fleet made a successful landing on Japanese held Makin Island on August 17th. The purpose of the expedition was to destroy the installations of this enemy

Petitioner's Exhibit A-1—(Continued)

seaplane base. This purpose was accomplished in its entirety and the force has been withdrawn.

Known enemy losses inflicted by the Marines are: at least eighty Japanese killed; radio installation and stores destroyed; one large and one small seaplane destroyed on the water. Other losses were inflicted on the enemy forces by heavy bombing attacks of their own aircraft from other bases, which were attempting to assist them.

The ships of our expedition gunned and sank one small transport and one gunboat.

Considering the nature of this operation, our forces suffered only moderate losses.

The Naval Officer commanding the expedition was Commander John M. Haines, U. S. Navy. The Marines were commanded by Lieutenant Colonel Evans F. Carlson, U. S. Marine Corps Reserve. Second in command of the Marines was Major James Roosevelt, U. S. Marine Corps Reserve. None of these officers was on the casualty list.

/s/ C. W. NIMITZ,

Admiral, U. S. Navy, Commander in Chief, U.S. Pacific Fleet, and Pacific Ocean Areas.

Petitioner's Exhibit A-1--(Continued)

United States
Pacific Fleet and
Pacific Ocean Areas
Communique Number 6

August 8, 1942.

Forces of the United States Pacific Fleet and Pacific Ocean Areas, assisted by units of the Southwest Pacific Area, launched offensive operations in the Tulagi area of the Solomon Islands on August 7th, East Longitude date. These operations are progressing favorably in spite of opposition by enemy land based aircraft and garrisons.

On August 8th, East Longitude date, a task force of the Pacific Fleet bombarded enemy ships and installations in Kiska harbor.

/s/ C. W. NIMITZ,

Admiral, U. S. Navy, Commander-in-Chief, U.S. Pacific Fleet, and Pacific Ocean Areas.

Communique Number 5 Was Never Released
By the Commander in Chief, Pacific Fleet

United States
Pacific Fleet and
Pacific Ocean Areas
Communique Number 4.

June 7, 1942.

The enemy appears to be withdrawing. Contact

Petitioner's Exhibit A-1—(Continued)

was lost during last night. Additional damage was inflicted on two enemy cruisers. Until all reports can be checked, it is impossible to state whether these cruisers are in addition to those reported in Communique #3, or whether they were damaged cruisers included in the previous report. One enemy destroyer was sunk.

One United States destroyer was sunk by a submarine but nearby ships rescued the personnel with small loss of life.

Except for minor submarine activity in the vicinity of the Hawaiian Island Chain, this Section of the Pacific is quiet.

/s/ C. W. NIMITZ

Commander in Chief, U. S.
Pacific Fleet, and Pacific
Ocean Areas.

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 3

6 June 1942

Through the skill and devotion to duty of their armed forces of all branches in the Midway area our citizens can now rejoice that a momentous victory is in the making.

It was on a Sunday just six months ago that the Japanese made their peacetime attack on our fleet

Petitioner's Exhibit A-1—(Continued)

and army activities on Oahu. At that time they created heavy damage, it is true, but their act aroused the grim determination of our citizenry to avenge such treachery, and it raised, not lowered, the morale of our fighting men.

Pearl Harbor has now been partially avenged. Vengeance will not be complete until Japanese sea power has been reduced to impotence. We have made substantial progress in that direction. Perhaps we will be forgiven if we claim we are about mid-way to our objective!

The battle is not over. All returns have not yet been received. It is with full confidence, however, that for this phase of the action the following enemy losses are claimed; two or three carriers, and all their aircraft, destroyed; in addition one or two carriers badly damaged and most of their aircraft lost; three battleships damaged, at least one badly; four cruisers damaged, two heavily; three transports damaged. It is possible that some of these wounded ships will not be able to reach their bases.

United States

Pacific Fleet and

Pacific Ocean Areas

Communique No. 3 (Continued)

One of our carriers was hit and some planes were lost. Our personnel casualties were light.

This is the balance sheet that the Army, Navy

Petitioner's Exhibit A-1—(Continued)
and Marine forces in this area offer their country
this morning.

C. W. NIMITZ,

Commander-in-Chief, U. S.
Pacific Fleet and Pacific
Ocean Areas.

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 2

June 5, 1942

The Japanese have not followed up their initial air attack on Midway except by a few ineffectual shots from a submarine last night. As more reports come in it appears that the enemy's damage is very heavy indeed, involving several ships in each of the carrier, battleship, cruiser and transport classes. This damage is far out of proportion to that which we have received.

The brunt of the defense to date has fallen upon our aviation personnel in which the Army, Navy and Marine Corps are all represented. They have added another shining page to their record of achievements.

One carrier already damaged by air attack was hit by three torpedoes fired by a submarine.

On every occasion when we have met the enemy our officers and men have been superlative in their

Petitioner's Exhibit A-1—(Continued)

offensive spirit and complete lack of fear. Our country can feel secure with such personnel such as this.

There were reported several instances of the enemy planes machine gunning our aviation personnel who had bailed out in parachutes or were adrift in rubber boats.

While too early to claim a major Japanese disaster it may be conservatively stated that the United States' control remains firm in the Midway area.

United States

Pacific Fleet and

Pacific Ocean Areas

Communique No. 2. (Continued)

The enemy appears to be withdrawing but we are continuing the battle.

C. W. NIMITZ,

Commander - in - Chief, U. S.
Pacific Fleet and Pacific
Ocean Areas.

4 June, 1942.

U. S. Pacific Fleet Communique No. 1.

At 6:35 a.m., Today Midway time, that island was heavily raided by Japanese carrier based planes. The attack was repulsed by the local defenders in which all the armed services are represented. A heavy toll of the attacking planes was taken. Damage to material installations at Midway was reported

Petitioner's Exhibit A-1—(Continued)

as minor. No report of personnel casualties has been received.

The Japanese carriers were accompanied by battleships, cruisers, and destroyers. One battleship and one carrier have been definitely damaged and other vessels are believed to have been hit. Our attacks on the enemy are continuing.

C. W. NIMITZ,

Commander - in - Chief, U. S.
Pacific Fleet, and Com-
mander - in - Chief, Pacific
Ocean Areas.

[Endorsed]: Filed 4-20-44.

PETITIONER'S EXHIBIT "B"

Library of Hawaii

ARMY AND NAVY REGISTER

FIGHTING THE JAPS

Gen. Henry H. Arnold, Commanding General, Army Air Forces, on January 17 received from the Poor Richard Club of Philadelphia the Gold Medal of Achievement for 1943, awarded annually by the club. The presentation was made at the Bellevue-Stratford Hotel in Philadelphia during the club's thirty-ninth annual dinner.

In accepting the honor, Gen. Arnold, among other things, said:

"We are fighting, and fighting hard, in theaters

other than Europe—for instance, in the Pacific and Asia against the Japs. These operations against the Japanese have not been secondary. The problems, however, are most difficult and have been entirely different. The European phase of the conflict is approaching its crisis sooner, and geographical conditions made it possible to close grips with that enemy first.

“In the islands of the Pacific there were no adequate airfields waiting for us such as we were able to use in Great Britain. All military activity in the Pacific must be directed toward securing air strips. This transoceanic war has been a slow, tedious, and difficult job, and, while much has been accomplished, we still have a long way to go. The aerial spearheads that we have driven into the periphery of the Japanese empire form an air front that has enabled us to get definite superiority over the enemy. These spearheads no longer knock at the extreme outside, but are reaching farther and farther within the circle and now threaten important Jap strongholds like Rabaul, Truk, and Kavieng.

“The Jap reaction to our penetration has been highly erratic. They have made strong bids to break our supremacy of the skies followed by periods of complete inaction. Jap aircraft have attacked our air bases again and again, disregarding huge losses, and then, changing their policies 100 per cent, have refused battle. They do not seem to have any strategic plan for defense, but rather counterattack haphazardly as if they sensed that nothing they do

can stop the increasing penetration of our aircraft, and—I'll let you in on a secret—nothing can.

“Jap propaganda reflects a similar type of erratic wavering. One day an admiral will say: ‘The people on the home front must not become intoxicated with war victories.’ The following day their radio will state: ‘The war situation manifests a grave and serious aspect.’

“There is good reason for such indecision and worry. Our air strips are constantly drawing the noose tighter around the Japanese empire.

“As with Germany, this job will not be easy. It will be no pushover. Far from it. Because of the distances, the climate, the geography, and the topography, much effort, long, hard hours of labor, intense suffering, heroic bravery, and great ingenuity will be demanded of our men. But we will be equal to the task, no matter how long it takes nor how difficult it is to accomplish.”

[Endorsed]: Filed 4-20-44.

PETITIONER'S EXHIBIT “C”

ARMY AND NAVY REGISTER

AMERICANS OF JAPANESE DESCENT

Plans have been completed for the reinstitution of general selective service procedures for American citizens of Japanese descent.

Under the War Department plan, Japanese-Americans considered acceptable for military serv-

ice will be reclassified by their Selective Service Boards on the same basis as other citizens and called for induction if physically qualified and not deferred.

Last February the 442d Combat Team, composed of Japanese-American volunteers, was formed. In a letter to the Secretary of War commenting on the formation of this unit, the President said:

"No loyal citizen of the United States should be denied the right to exercise the responsibilities of his citizenship regardless of his ancestry. The principle on which this country was founded and by which it has always been governed is that Americanism is a matter of the mind and heart; Americanism is not, and never was, a matter of race or ancestry."

The excellent showing which the combat team has made in training and the outstanding record achieved by the 100th Battalion (a former Hawaiian National Guard unit) now fighting in Italy were major factors in the adoption of the present plan.

[Endorsed]: Filed May 16, 1944.

PETITIONER'S EXHIBIT "D"

Ready for Jap Fleet

Admiral William F. Halsey, commander in chief in the South Pacific area, this week expressed his conviction that even in the event of a concentration of Japanese sea power for the purpose of one supreme counter-blow the Pacific fleet is able to cope

with the situation. When asked the question at 11 Jan. press conference of the Secretary of the Navy, Admiral Halsey, who is in this country for about ten days, replied: "Decidedly, yes," adding that in the event of such a concentration the enemy could put up a stiff fight. He does, however, consider the Japanese fleet to have been seriously crippled by American forces.

Asked if he considered the enemy base at Truk to be a point which must of necessity be taken, he replied: "I can tell you the only definite place that has got to be taken, and that is Tokyo, and don't let 'em stop until they get there."

He added a warning to the American people against the acceptance of peace offers before this final goal is reached.

Japanese planes, said Admiral Halsey, are as good and possibly better than they ever were but the enemy's pilot material is distinctly on the down grade, many pilots in enlisted grades now being noted in place of the officer pilots employed formerly.

In speaking of the replacement of enemy losses, he stated: "They are carrying on a building program which we hope and believe is not doing too well. I think they have lost a tremendous number of cruisers."

Telling of the crippling of the Japanese supply lines by our air, surface and submarine force, he said: "They go into a place first with shipping, and when they get severely hit they go in with barges. We got some of these with troops on and made good

Japs of them. They next use submarines, and then as a last resort they let them starve."

Telling of the work accomplished by the Seabees, he said: "It just beggars description. Munda airport is today as fine an airport as any you have in the United States."

Urged by Mr. Knox to tell of the part which officers of the Naval Reserve have played in this area, he answered: "We don't think of Regulars and Reserves, they are all Naval officers and are all doing a splendid job. I don't believe that this great country has ever before produced as fine fighting men as we have today."

[Endorsed]: Filed 4-20-44.

PETITIONER'S EXHIBIT "E"

ARMY AND NAVY REGISTER

Washington, D. C., March 4, 1944

Marshall Islands Campaign

Maj. Gen. Willis H. Hale, U. S. A., Commanding General, U. S. Army 7th Air Force, at a press conference on March 1 stated that capture of important Marshall Islands has won from the Japanese the key to the entire central Pacific and advanced by several weeks the time table of our march to Tokyo.

It is just a little over three months since the 7th Air Force aggressively took the air offensive in the central Pacific to prepare for future combined oper-

Petitioner's Exhibit E—(Continued)

ations with sea and ground forces. Prior to that time the 7th was engaged in defense of the Hawaiian Islands from the very serious threat of invasion, in preparing bases from which to operate, in building up its striking strength and in training crews for operations in what we, the vast ocean, and the weather have made the most experienced Japanese pilots believe is the most difficult theater of war in which to maintain sustained air combat.

After December 7, 1941, the imminent threat of invasion of the Hawaiian Islands was not lifted until the Battle of Midway. Then we required bases from which to operate. These were gradually built up 2,000 to 2,400 miles from Oahu in the Phoenix and nearby islands and later in the Ellice group.

These distances are important. Any understanding of the war in the Pacific must be based on an appreciation of distance. Many people in the United States have virtually no conception either of its watery vastness or of air fighting conditions in the central Pacific. The mission of the 7th Air Force, present and future, involves land-based air operations in a theater which extends over some 16,000,000 square miles, or more than five times the size of the United States. The climate is wonderful in much of this weather, but the weather is awful. It is rapidly changing and treacherous, and dependable forecasts are rarely available to the air crews of the 7th Air Force. In operations against the Marshalls, for example, 7th Air Force flyers were faced with a "mov-

Petitioner's Exhibit E—(Continued)

ing front" which sometimes reached an altitude too high to fly over and which often forced the pilots to fly, in a driving storm, a few feet above the water."

Having occupied the Marshalls for more than 20 years, the Japs were fully cognizant of these conditions. This was possibly a major reason why they have not poured so many replacement planes into this area as they have done, despite their continuing heavy losses, into the New Britain-New Guinea sector. There was no use sending very large numbers into the central Pacific, where often their pilots couldn't fly them.

Although we had previously attacked Japanese installations there, the 7th Air Force began its intensive and systematic bombing in the Gilbert campaign on November 13. Our principal targets were Tarawa, Makin, and Abemama, in addition to several supporting bases in the Marshalls.

That campaign is no longer news. There is, however, one comparison between the Gilbert campaign and the Marshalls campaign which is of note: The 7th Air Force bombed the Marshalls for 70 days prior to the landing, while the Gilberts were systematically bombed for only one week.

Japanese Homeland to Be Bombed

One of the objectives of the air war in the Pacific is to secure a chain of bases which will put the Japanese homeland within effective range of our heavy bombers. The Marshalls operation was a long step in carrying out that plan.

Petitioner's Exhibit E—(Continued)

The mission of the 7th Air Force in the preparation for and during the actual invasion of the Marshalls was to deny to the Japs the use of their air power and thereby remove the awful hazard faced by any invasion fleet that a determined attack by land-based enemy aircraft may seriously cripple major fleet units. So successful was the 7th in the performance of this mission that the extensive naval forces participating in the assault and occupations of Kwajalein and Majuro—the largest ever assembled in the Pacific—were not at any time—before, during or after—attacked by as much as a single hostile aircraft.

On one island where the Japanese brought in replacement planes, the 7th bombed out the radar station. It was therefore possible for carrier-based planes to attack that island with complete surprise and to knock out in one blow the entire Japanese force of some 60 airplanes.

The question has been asked, Would it have been possible to make another Pantelleria out of the Marshalls operation? It was not sufficient to render useless the Marshall Islands to the Japanese, as they were needed by our air forces for air bases. The 7th Air Force was, however, well on its way to accomplish the neutralization of the five principal Jap bases in the Marshalls as early as two weeks before the occupation. (By neutralization is meant denying the enemy the intended use of a base.) At that time two of the important islands were 80 per cent

Petitioner's Exhibit E—(Continued)

neutralized, one was 60 per cent, one 50 per cent, and one 20 per cent. By the time of the assault the "neutralization" had proceeded much further, but it can never be complete unless the enemy abandons the air base, a practice for which the Japs are not particularly noteworthy. However, due to attacks from the air, the Marshalls had ceased to exist as a formidable bastion in the Jap outer perimeter of defense.

The 7th Air Force, by its day and night bombing of all major Japanese installations in the Marshalls—with Liberators, Mitchells, Dauntless, P-40 Warhawks, everything we had with wings on it which could carry a bomb—to a large degree helped to render impotent the extensive ground defense installations which the Japs had developed on several of the islands and on which they had confidently counted successfully to defend those islands.

Due in part to the impartiality of our bombings, the Japs didn't know where to expect the Marshalls assault. Reports from our aircraft showed that they were redistributing their forces prior to the time of the invasion and in anticipation of it; but they were out-smarted.

In addition to its operation in preparation for the Marshalls occupation, the 7th also supported the assault by successfully dropping 2,000-pound "atoll busters" on Jap gun emplacements defending Kwajalein and by unremitting attacks on other Jap islands which rendered them useless as supporting bases in the defense of Kwajalein and Majuro.

Petitioner's Exhibit E—(Continued)

In the Marshalls operation the 7th Air Force destroyed or probably destroyed some 21 enemy naval or cargo vessels and damaged, in many cases seriously, at least 29 more.

In the Marshalls campaign from 80 per cent to 92 per cent, depending on the type of plane involved, of all bombs dropped by the 7th Air Force hit the target at which they were aimed. This record is as great a tribute to the excellence of the Norden bomb sight as it is to the skill of the 7th Air Force air crews. We use the Norden bomb sight exclusively in our heavy bombers.

The adaptation of the 75-mm. cannon in the Mitchell bomber to the requirements of the central Pacific theater was an interesting aspect of the Marshalls campaign. Used experimentally elsewhere, this was the first time it played an important role in a specific operation. This cannon proved to be a highly formidable weapon with a surprising degree of accuracy. It was used with good results against shipping, but particularly the "flying cannon" served to neutralize Jap ack-ack and automatic weapons fire which had taken a heavy toll of our Mitchell bombers in their minimum-altitude attacks against Jap island installations.

The Mitchells, flashing in just skimming the water at more than 250 miles an hour, presented a point-blank target. But with the "flying cannon" the Mitchells were able to drive the Jap gun crews from their weapons and in many cases to destroy the weapons themselves. In the approach to the target one

Petitioner's Exhibit E—(Continued)

plane could get off as many as 10 shells. With such fire power even a small formation of Mitchells could lay down a considerable artillery barrage. The Japs could not stand up to it. This use of this cannon in the Mitchell does not in any way impair the bomb load, the speed, or the range of the aircraft.

As a medium and heavy bomber team the Mitchell-Liberator combination is proving itself beyond our greatest expectations practically every day in the Pacific. The planes fly, shot up, through weather so turbulent it threatens to pull them apart. Almost never do they have fighter protection; the distances are too great. Frequently they must fight their way into and out from a target. Sometimes they get blasted full of holes; sometimes they get motors shot out, but just about always, if the wings stay on, they get home. The men and women who are building these airplanes deserve great credit.

The Marshall campaign provided the Japs with a handwriting on the wall—or a handwriting in the sky—which must be legible to all of them. The pattern for the future—at least so far as the Air Force is concerned—will be to render ineffectual every island group which stands between us and the Japanese homeland. The 7th Air Force is already blasting at the Carolines. Anyone who wants to know where it is going from there need only look at the map.

These operations are largely concerned with securing air bases, but they are in no sense "island hopping," a term which has been used largely to in-

Petitioner's Exhibit E—(Continued)

dicate a tortuously slow approach to Japan. Through combined operations with the Navy and the marines, we are advancing by leaps and bounds. The 7th Air Force commenced its bombing of the Gilberts on November 13 from bases roughly 4000 miles from Tokyo. About 85 days later we were set in the Marshalls, and our bases there are about 2,500 miles from Tokyo. Thus was gained 1,500 miles, an average of more than 17 miles a day.

Those Who Fight

Before summarizing the Marshalls campaign a few further remarks about the 7th Air Force and the men in the Air Forces seem appropriate. The men who fight the air war over the Pacific carry on as tough a battle as is being waged anywhere in the world. They don't live in comfortable buildings; they sleep on canvas cots in tents and under mosquito netting. Their showers are gasoline drums with a nozzle, and they wash and brush their teeth and shave in tin hats. They are 2,400 miles from the nearest American community, the nearest dance, the nearest normal social life. If they are shot down or disabled over the target they face what to them is the stark horror of capture. If they go down in the ocean their chances of rescue, despite the vigilant Navy rescue service, are problematical. Yet they must fly constantly. During January every bomber in the 7th Air Force forward echelon averaged six missions. Considering the distance traveled; that is, in my opinion, more flying per airplane than in any other theater in the war.

Petitioner's Exhibit E—(Continued)

Because of conditions, the 7th Air Force has had to become a versatile air force. Bombers are used occasionally as fighters, and fighters are regularly used as bombers.

The fastest P-39 in the Pacific is a night fighter built by 7th Air Force engineers from a reclaimed fuselage and spare parts. Heavy bombers of the 7th Air Force constantly have to land and take off from strips which any rule book will say are impossibly short for a B-24.

The 7th developed its convoy system for ferrying fighters over long distances in which the fighters fly formation on a B-24, which does the navigating, a hazardous but necessary undertaking because of weather. The 7th has developed its own transition training schools, as every crew member must have a postgraduate course before he is qualified to fly in the central Pacific.

The 7th Air Force is operating bombing missions longer than those in any other theater. The longest was 2,769 miles, and the average is more than four times the distance from London to Berlin. All flights cover great water distances with no intermediate landings. The usual checkpoints, such as rivers, mountains, and railroads, are nonexistent.

The navigation must be perfect. Targets are pin points on islands which themselves may be smaller than the factory area of some prime targets in Germany. It isn't enough that they hit the island; they must hit the target. Seventh Air Force bombardiers must be able to get hits from an altitude of 12,000

Petitioner's Exhibit E—(Continued)

feet, an average of less than 250 feet from the center of the aiming point. This is doubtless the most consistently accurate bombing being done anywhere in the world.

In a mission over Rongelap Liberator bombers were assigned the job of knocking out a radio station in a building only 35 feet by 125 feet. The ships went in at 3,500 feet, made a perfect run and dropped their bombs squarely in the middle of the building. They used 100-pound bombs, relying on accuracy not on tremendous concussion.

Salient Features of the Campaign

1. In losing the Marshalls the Japs received a great strategic setback. Tarawa was the key to the Marshalls, but the Marshalls provided the key to the entire central Pacific.

2. In the Marshalls was proved a perfected model of combined operations so successful that we have been enabled materially to put ahead our Pacific time table.

3. The basic reason for the excellent success in the use of land-based aircraft in this combined operation is the fact that the 7th Air Force was utilized, as airpower always should be, as a complete unit with an assigned mission. One of the important lessons of the Marshalls campaign is the proved facility with which the land-based aircraft of an Army air force can support and cooperate with the Navy and amphibious forces, in combined operations.

Petitioner's Exhibit E—(Continued)

4. The value of strategic bombing in the central Pacific was demonstrated in the Marshalls. In the march across the Pacific land-based airpower will have the dual function proved in the Marshalls of neutralizing the enemy air forces and preparing Jap-held islands so that they can be more successfully attacked by Navy surface vessels and carrier-borne aircraft and stormed by infantry at a minimum of casualties.

5. While the Marshalls campaign, under the brilliant and meticulous leadership of Admiral Nimitz, conclusively demonstrated that properly employed heavy land-based aircraft are a vital factor in operations ahead, this campaign also revealed outstanding evidence of the unexcelled training and equipment of our Army Ground forces in amphibious assault operations, along with our incomparable marines. These, coupled with the unveiling of the devastating power of the guns of our expanded Navy, constitute the first really terrifying threat Japan has ever known.

[Endorsed]: Filed 4-20-44.

PETITIONER'S EXHIBIT "F"

SUPREME COURT

	1939	1940	1941	1942	1943	1939 to 1943
Civil	31	35	9	13	20	108
Criminal	4	6	1	7	4	22
Total	35	41	10	20	24	130

CIRCUIT COURTS

Civil, other than probate	2097	2119	2095	2243	2581	11135
Probate	1751	1946	2445	2172	1057	9371
Criminal	789	666	501	156	557	2669
				[In pencil]: 4		22
Juvenile & Bastardy	970	1203	1241	945	1175	5533
Total	5607	5933	6282	5516	5370	28708
Grand Total	5642	5974	6292	5536	5394	28838

(Testimony of Gustaf K. Sproat.)

Petitioner's Exhibit F—(Continued)

	FIRST CIRCUIT					SECOND CIRCUIT					THIRD CIRCUIT					FOURTH CIRCUIT				
	1939	1940	1941	1942	1943	1939	1940	1941	1942	1943	1939	1940	1941	1942	1943	1939	1940	1941	1942	1943
Law	286	444	333	129	137	21	12	31	7	6			2	1	17	34	41	28	33	
Equity	511	272	86	45	46	2	6	8	5	3	3				10	9	10	12	4	
Probate	1251	1493	1918	1617	418	253	237	218	222	269	40	37	20	26	295	169	151	211	287	
Divorce	111	1056	1297	1763	1945	110	85	102	98	97	19	16	22	29	117	72	80	48	75	
Special proceedings	2	7	21		3						37				37	22	38	41	8	
Criminal	679	510	343	107	420	55	69	83	25	66		3	8	8	50	35	40	36	11	
Juvenile	654	759	839	627	725	67	84	89	73	98	26	33	12	65	245	126	182	168	78	
Bastardy	30	38	39	48	17	14	9	6	3	7			1		4	2	5	2		
Totals	4324	4579	4876	4336	3711	522	502	537	433	546	110	89	65	129	775	469	547	546	496	
Civil	1710	1779	1737	1937	2131	133	103	141	110	106	44	16	24	30	181	137	169	129	120	
Probate	1251	1493	1918	1617	418	253	237	218	222	269	40	37	20	26	295	169	151	211	287	
Criminal	679	510	343	107	420	55	69	83	25	66		3	8	8	50	35	40	36	11	
Juvenile & Bastardy	684	797	878	675	742	81	93	95	76	105	26	33	13	65	249	128	187	170	78	
	4324	4579	4876	4336	3711	522	502	537	433	546	110	89	65	129	775	469	547	546	496	

[Endorsed]: Filed 4-20-44.

Petitioner's Exhibit F—(Continued)

	SECOND CIRCUIT					THIRD CIRCUIT					FOURTH CIRCUIT					FIFTH CIRCUIT					TOTALS				
	1939	1940	1941	1942	1943	1939	1940	1941	1942	1943	1939	1940	1941	1942	1943	1939	1940	1941	1942	1943	1939	1940	1941	1942	1943
21	12	31	7	6				2	1	17	34	41	28	33		10	7	5		25	351	504	399	170	185
2	6	8	5	3		3				10	9	10	12	4		3	1	3		9	528	289	109	54	62
253	237	218	222	269		40	37	20	26	295	169	151	211	287		38	28	78	20	75	1751	1946	2445	2172	1057
110	85	102	98	97		19	16	22	29	117	72	80	48	75		40	30	36	45	70	1152	1267	1505	2010	2229
						22				37	22	38	41	8		20	14	20	1	65	66	59	82	9	105
55	69	83	25	66			3	8	8	50	35	40	36	11		20	44	31	5	21	789	666	501	156	557
67	84	89	73	98		26	33	12	65	245	126	182	168	78		47	86	82	50	75	920	1144	1190	893	1143
14	9	6	3	7				1		4	2	5	2			4	6	3	1	4	50	58	51	52	32
522	502	537	433	546		110	89	65	129	775	469	547	546	496		182	216	258	122	338	5607	5933	6282	5516	5370
133	103	141	110	106		44	16	24	30	181	137	169	129	120		73	52	64	46	163	2097	2119	2095	2243	2581
253	237	218	222	269		40	37	20	26	295	169	151	211	287		38	28	78	20	75	1751	1946	2445	2172	1057
55	69	83	25	66			3	8	8	50	35	40	36	11		20	44	31	5	21	789	666	501	156	557
81	93	95	76	105		26	33	13	65	249	128	187	170	78		51	92	85	51	79	970	1262	1241	945	1175
522	502	537	433	546		110	89	65	129	775	469	547	546	496		182	216	258	122	338	5607	5933	6282	5516	5370

PETITIONER'S EXHIBIT G-1

(Copy)

GALEN M. FISHER

11 El Sueno, Orinda, Calif.

April 30, 1943

Mr. Charles F. Loomis

P. O. Box 459

Honolulu, Hawaii

Dear Loomis:

Recently the following statements have been made in southern California and it is important that we be able to deny them, if they are false or partly so.

1. The movie, "Air Force," states that on December 7th Japanese trucks in Honolulu deliberately put out of commission several American air planes.
2. On December 7th American machine gunners cleared Honolulu streets of Japanese.
3. All over Honolulu were signs which read, "Here a Japanese traitor was killed."
4. The Government has prevented the Mainland from getting all the damaging facts as to Japanese sabotage, etc.
5. The Japanese military attacking force bombed Oahu on December 8 and 9, as well as on December 7, 1941.
6. One civilian from Honolulu told a Los Angeles clergyman that his truck had been used for about a week after December 7th for picking up dynamite planted by the Japanese traitors.

I know that the statements in the Tolan Report and by Edgar Hoover and by Blake Clark have stated or implied the falsity of some of these statements, but I should appreciate having your up-to-date reply.

Despite the execution of the American aviators and the statements made by General DeWitt to the House Committee here, the tide is slowly moving in the right direction, I believe.

Faithfully yours,

GALEN M. FISHER.

[Endorsed] Filed 4-20-44.

PETITIONER'S EXHIBIT G-2

(Copy)

POLICE DEPARTMENT

City and County of Honolulu

Honolulu, Hawaii

May 12, 1943

Memo to Mr. Charles F. Loomis:

Relative to the letter of Mr. Galen M. Fisher, addressed to you under date of April 30, I wish to comment with reference to the six statements which he submitted, as follows:

1. The statement that Japanese trucks in Honolulu deliberately put out of commission several American air planes is an absolute lie. The Military and Naval Intelligence services and the F.B.I. can verify that there were no Japanese trucks on

any airfield, nor did any such trucks do any damage in Honolulu on December 7th.

2. There was no congregation of any crowds, and the Army, Navy or Marine Corps was not called on to preserve order in the city. No American machine gunners cleared Honolulu streets of any Japanese before, on or after December 7th.

3. The statement that all over Honolulu had signs which read, "Here a Japanese traitor was killed," is another absolute lie.

4. There was not one act of sabotage attempted by any Japanese or any other person during December 7th or thereafter.

5. The Japanese bombed Oahu twice: on December 7, 1941, and sometime during the latter part of 1942, when four bombs were dropped in the hills back of the city.

6. There was no dynamite planted by any Japanese or anyone else in or about Honolulu in December; and no civilian ever used a truck to pick up any dynamite.

While no acts of sabotage were committed, the Japanese did maintain an excellent system of espionage.

(signature)

W. A. GABRIELSON

Chief of Police

WAG:DL

[Endorsed]: Filed 4-20-44.

PETITIONER'S EXHIBIT G-3

(Copy)

HEADQUARTERS HAWAIIAN
DEPARTMENTOffice of the Assistant Chief of Staff
for Military Intelligence

Ref. no.

17 May 1943

312.11 PR/ID

Mr. Charles F. Loomis

P. O. Box 450

Honolulu, T. H.

Dear Mr. Loomis:

I was surprised to learn that some of the many Island rumors about the Hawaiian Islands during the first few days of the war are still prevalent on the mainland. They have been repeatedly denied by all authorities.

In connection with the six statements that Mr. Fisher enumerated in a letter to you, it can be positively stated that all are untrue. It is hardly worthwhile to refute them individually but it might be of interest for you to know that the movie, "Air Force," was censored and the scenes about the misuse of the Japanese trucks and the Japanese snipers on Maui were deleted before the picture was permitted to be shown in Hawaii.

Having been in charge of military intelligence activities since June 1941, I am in position to know what has happened. There have been no known acts of sabotage, espionage or fifth column activities

committed by the Japanese in Hawaii either on or
subsequent to December 7, 1941.

Sincerely yours,

(signature)

KENDALL J. FIELDER

Colonel, G.S.C.

A.C. of S., G-2

[Endorsed]: Filed 4-20-41.

PETITIONER'S EXHIBIT "H"

[Letterhead of]

Bishop Insurance Agency, Ltd.

Honolulu, Hawaii, U.S.A.

April 4, 1944

J. Garner Anthony Esq.

c/o Robertson, Castle & Anthony

312 Castle & Cooke Bldg.

Honolulu, T. H.

Dear Sir:

Re: War Risk Rates

In reply to your inquiry, the following are the War Risk rates charged by Marine Insurance Companies on merchandise from the Pacific Coast to Honolulu for the periods mentioned:

From Oct. 5th, 1941 to Dec. 12th, 1941.....	.05
Dec. 8th, 1941 to Dec. 9th, 1941.....	4.00
Dec. 10th, 1941 to Dec. 23rd, 1941.....	5.00
Dec. 24th, 1941 to Jan. 21st, 1942.....	2.50
Jan. 22nd, 1942 to May 13th, 1942.....	1.50
May 14th, 1942 to June 3rd, 1942.....	2.00
June 4th, 1942 to June 10th, 1942.....	1.50
June 11th, 1942 to Dec. 3rd, 1942.....	2.50
Dec. 4th, 1942 to Jan. 6th, 1943.....	2.00
Jan. 7th, 1943 to May 16th, 1943.....	1.50
May 17th, 1943 to June 30th, 1943.....	1.00
July 1st, 1943 to Aug. 1st, 1943.....	.87½
Aug. 2nd, 1943 to Dec. 8th, 1943.....	.75
Dec. 9th, 1943.....	.50

Yours very truly,

RALPH C. SCOTT

Ralph C. Scott

Vice-Pres. & Manager

RCS:W

[Endorsed]: Filed 4-20-44.

COMPARATIVE STATEMENT OF GROSS INCOME AND CONSUMPTION TAX COLLECTIONS
AND THE TAX BASE FOR THE CALENDAR YEARS 1941 - 1942 - 1943

Business Activities	1941	1942	1943	1941	1942	1943	1941 — 1943 Comparison	
	Tax	Tax	Tax	Base	Base	Base	Increase Tax	or Decrease Base
Retailing	2,853,845.42	3,832,233.65	5,003,503.27	190,256,170.98	255,481,987.83	333,566,551.08	2,149,657.85	143,310,380.10
Sugar Processing	790,311.55	776,354.30	973,210.01	52,687,384.14	51,756,901.57	64,880,602.43	182,898.46	12,193,218.29
Pineapple Canning	755,902.08	632,356.10	664,461.03	50,393,421.60	42,157,031.16	44,297,357.67	91,441.05*	6,096,063.93*
Other Canning	41,438.16	5,437.98	1,855.99	2,762,541.25	362,531.65	123,732.53	89,582.17*	2,638,808.72*
Producing	22,939.10	23,371.59	41,597.77	9,175,640.00	9,348,636.00	16,639,108.00	18,658.67	7,463,468.00
Wholesaling	319,634.06	360,927.25	445,296.29	127,853,624.00	144,370,900.00	178,118,516.00	125,662.23	50,264,892.00
Certain Manufacturing	58,777.68	60,559.18	61,676.06	23,511,072.00	24,223,672.00	24,670,424.00	2,898.38	1,159,352.00
Printing & Publishing	49,519.05	72,795.98	58,074.35	3,301,266.54	4,853,060.47	3,871,619.45	8,555.30	570,352.91
Services	276,173.93	374,599.43	455,246.14	18,411,577.02	24,973,270.39	30,349,712.30	179,072.21	11,938,135.28
Professional Services	108,272.06	127,723.64	165,915.42	7,218,129.82	8,514,900.86	11,061,016.95	57,643.36	3,842,887.13
Contracting	370,994.85	1,985,017.01	1,282,864.22	24,732,965.12	132,334,335.02	85,524,195.80	911,869.37	60,791,230.68
Thea. Amuse. & Radio	186,584.72	110,910.84	184,652.64	7,105,641.51	7,394,048.60	12,310,163.70	78,067.92	5,204,522.19
Interest	53,301.21	44,498.34	39,499.45	3,553,410.23	2,966,553.05	2,633,294.00	13,801.76*	920,116.23*
Commissions	143,097.79	142,346.12	182,770.27	9,539,842.74	9,489,731.85	12,184,672.49	39,672.48	2,644,829.15
Rentals	367,489.23	428,121.19	491,181.35	24,499,257.35	28,541,384.11	32,745,390.61	123,692.12	8,246,133.26
All Other Income	127,333.67	166,324.24	199,329.94	8,488,903.06	11,088,271.57	13,288,649.38	71,996.27	4,799,746.32
Consumption Tax	233,599.98	154,727.97	141,917.70	15,573,316.71	10,315,187.70	9,461,170.51	91,682.28*	6,112,146.20
Sub Totals	6,679,214.54	9,298,304.81	10,393,051.90	579,064,164.07	768,172,403.83	875,726,176.90	3,713,837.36	296,662,012.83
Penalties	2,583.10	2,225.66	2,470.79				112.31*	
Totals	6,681,797.64	9,300,530.47	10,395,522.69	579,064,164.07	768,172,403.83	875,726,176.90	3,713,725.05	296,662,012.83
License Fees	29,929.00	30,082.00	33,308.00				3,379.00	
Grand Totals	6,711,726.64	9,330,612.47	10,428,830.69	579,064,164.07	768,172,403.83	875,726,176.90	3,717,104.05	296,662,012.83

* Figures circled in pencil.

OTHER COMPARATIVE DATA

Grand Totals, For The Cal- endar Years		Tax	Base						
1936		3,550,538.58	353,697,498.49	1943 Collections	1st Div.	2nd Div.	3rd Div.	4th Div.	Territorial
1937		3,639,972.97	394,090,226.23	1940 Collections	9,333,565.50	278,068.37	610,692.94	206,503.88	10,428,830.69
1938		3,689,379.29	373,956,139.05	Increase	4,416,856.46	179,912.94	409,094.24	130,014.64	5,135,878.28
1939		4,247,863.40	394,806,253.64	Increase Percentages	4,916,709.04	98,155.43	201,598.70	76,489.24	5,292,952.41
1940		5,135,878.28	433,906,898.71		111.3%	54.5%	49.2%	58.8%	103%

Tax Commissioner's Office
January 15, 1944

[Endorsed]: Filed 4-20-44.

PETITIONER'S EXHIBIT "J-1"

[Stamped]: Jan 1 1943

Gen. Emmons Views Future With Confidence
By Lt. Gen. Delos C. Emmons, Military Governor
and Commander of the Hawaiian Department

During the year which is now drawing to a close, all members of the armed forces—army, navy, marine corps and coast guard—and all elements of the civilian population have applied themselves industriously and wholeheartedly toward attaining the military security and safety of these islands.

The work has been difficult and has required the closest cooperation and coordination of all people here.

As we review the accomplishments of the year, it must be obvious to all that remarkable results have been accomplished.

By reason of the work which has been done, we are entitled to look forward with confidence and reassurance to the future.

I congratulate the people of the territory of Hawaii and all members of the armed services upon the zeal and spirit which they have displayed, and I take this occasion to extend to the entire population of the Territory my sincere and cordial greetings for the New Year, and to express the wish that they may continue in the future along the path they have so well outlined in the past.—Star-Bulletin.

[Endorsed]: Filed 4-20-44.

PETITIONER'S EXHIBIT "J-2"

[Stamped]: Jul 5 1943

Gen. Richardson Pays High Tribute
By Lt. Gen. Robert C. Richardson, Jr., Command-
ing General, Hawaiian Department

I am honored to have the opportunity of paying tribute today to the wardens' division of the office of civilian defense.

All the citizens of this territory share with me a deep pride in your organization.

Ever watchful over the skies, every ready to fight incendiary bombs and fires, trained for defense against poison gas and in the use of chemicals, you are in reality just as much on a wartime basis as our soldiers, our sailors and our marines.

In case of an attack, on these islands, which is always a possibility, you will be obliged to serve under fire, when your efficiency and courage will be put to the test.

* * *

Today is the second birthday of your organization, which started in a very small way with the formation of a fire wardens' committee of the municipal major disaster council.

After Pearl Harbor the committee grew rapidly, suffered all the pangs of reorganization, and finally emerged as a defense unit of which any city might well be proud.

You comprise an able, efficient and patriotic group of citizens upon whom the territory must depend if attacked.

* * *

We should indeed be very thankful and grateful that time has permitted us to organize so formidably against attack, but one is never so well prepared that he can permit himself to rest on his oars and in the case of the Hawaiian islands we can not overlook the capabilities of our enemy, the Japanese, to strike at us again.

They are an astute, resourceful and relentless foe, and therefore we must never for one instant relax our alertness, nor our preoccupation with our defense.

Meanwhile, we are training our troops in offensive warfare as well as in defensive tactics.

I count upon you to uphold your present high standards because with your aid and with the aid of people like you who serve so willingly, so silently, and without ostentation, America can not fail to win this war.—Star-Bulletin.

[Endorsed]: Filed 4-20-44.

PETITIONER'S EXHIBIT "J-3"

[Stamped]: Jun 7 1943

Richardson Pays Tribute to Army-Navy-
Civilian Unity

Star-Bulletin June 5, 1943

The text of his address follows:

"As I assume command of the Hawaiian Department I am impressed by the great development which has been accomplished in this area in the past 17 months.

"Under the able leadership of my predecessor, Lt. Gen. Delos C. Emmons, the Hawaiian islands have been transformed into a strongly organized outpost for the defense of the Western Hemisphere.

"This group of islands is now in a position to take care of any enemy who would be so rash as to attack it.

"The Hawaiian group is on guard, so to speak, for the entire Pacific coast of the United States, Canada, and our sister republics to the south, and as the war against the Japanese progresses these islands will be the base of the offensive drive against Japan.

Here Many Times

"It has been my good fortune to visit Hawaii many times during my service as an officer in the past 38 years, en route to and from the Philippines and more recently while on a mission a year ago throughout the South Pacific and Australia.

"The measures which have been taken in the past year to strengthen the defenses of these islands make of these islands a vastly different Hawaii today.

"Outwardly the change is not so noticeable, because nature—which has always been kind and generous to the islands—furnishes their best camouflage; but inwardly there has been a moral and spiritual change in the life of the people, who no longer take life in the Pacific for granted, but are acutely alert to their dangers and to their responsibilities.

"There is unusual unity between the civil population and the armed forces, both of which standing together are ready for any test to which they may be put. To the people at home, as well as to our fighting comrades all over the world I am glad to report from my new command that the state of the defenses of this outpost and of the training of the troops is good.

Civilian Workers Lauded

"It is gratifying and inspiring to feel the intenseness of purpose displayed by our civilian war workers and by our soldiers in maintaining themselves in a state of readiness.

"There have been many necessary restrictions imposed on military and civilian personnel alike that have effected great changes in the daily lives of every man, woman and child on the islands; but these restrictions have been accepted in the finest spirit of cooperation, as everyone realizes that no chances can be taken in the defenses of Hawaii.

"The army, the navy, the marines and the coast guard are as one, and hand in hand with the civil government have created an atmosphere that is charged with an eagerness to get on with the war. There is a complete absence of complacency and a corresponding state of high morale.

Ideal Training Ground

"With their varied terrain, the Hawaiian islands offer an ideal place for extensive training in jungle and amphibious warfare and, taking advantage of those natural facilities, an intensive training in these types of warfare is in progress.

"Hawaii is the key to the Pacific and the key to the defenses of the western coast of the United States. There is certainly no doubt that Hawaii is one of the main approaches which our president declared will lead to Tokyo.

"Passing through here will be an ever increasing number of troops and an ever increasing amount of the machinery of war, all directed toward the very heart of the empire of Japan.

"On this day—the anniversary of the Battle of Midway—although we are much stronger than we were at that time, we are even more alert than ever.

"This anniversary will recall to every American the sacrifices which have been made by our gallant comrades of the army, navy, marine corps and merchant marine who gave their lives for our country not only at Midway but in Guadalcanal, Tulagi, New Guinea, the Bismarck sea, Darwin, Africa, and Tunisia, and throughout the world.

"Our responsibility to these men is great. We will carry on to keep their memories alive for all time to come, and that they may know that their comrades who are left behind will never let them down."

[Endorsed]: Filed 4-20-44.

CLERK'S COPY.

Vol. II

TRANSCRIPT OF RECORD

(Pages 381 to 704)

Supreme Court of the United States

OCTOBER TERM, 1945

No. 15

HARRY E. WHITE, PETITIONER,

vs.

**WM. F. STEER, COLONEL, INFANTRY, UNITED
STATES ARMY, PROVOST MARSHAL, CENTRAL
PACIFIC AREA**

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE NINTH CIRCUIT**

PETITION FOR CERTIORARI FILED DECEMBER 29, 1944.

CERTIORARI GRANTED FEBRUARY 12, 1945.

No. 10774

United States
Circuit Court of Appeals
For the Ninth Circuit.

WM. F. STEER, Colonel, Infantry, United States
Army, Provost Marshal, Central Pacific Area,
Appellant,

vs.

HARRY E. WHITE,

Appellee.

Transcript of Record
In Two Volumes
VOLUME II
Pages 381 to 704

Upon Appeal from the District Court of the United States
for the Territory of Hawaii

PETITIONER'S EXHIBIT "J-4"

* * *

The text of Admiral Nimitz' proclamation was as follows:

PROCLAMATION No. 1

To the People of the Marshall Islands:

In prosecuting their war against the Japanese it has become necessary for the armed forces of the United States under my command to occupy this and other islands of the Marshall islands.

It is the policy of the United States forces not to make war upon the civilian inhabitants of these islands but to permit them to continue their normal lives and occupations in a peaceable manner; so far as war necessities and their own behaviour permit.

In order to preserve law and order and provide for the safety and welfare both of my forces and of yourselves, it is necessary to establish military government in the islands occupied by United States forces.

Therefore, I, C. W. Nimitz, Admiral, United States navy, commander in chief, United States Pacific fleet and Pacific ocean areas and military governor of the Marshall island areas occupied by United States forces, do hereby proclaim as follows:

I.

All powers of government and jurisdiction in the occupied territory and over the inhabitants therein, and final administrative responsibility, are vested in me as admiral, United States navy, commanding

the United States forces of occupation, and military governor, and will be exercised through subordinate commanders by my direction.

II.

The exercise of the powers of the Emperor of Japan shall be suspended during the period of military occupation.

III.

All persons will obey promptly all orders given by me or under my authority; must not commit acts hostile to the United States forces under my command or in any way helpful to the Japanese; must not commit acts of violence or any act which may disturb public safety in any way.

IV.

Your existing personal and property rights will be respected and your existing laws and customs remain in force and effect, except to the extent that it is necessary for me in the exercise of my powers and duties to change them.

V.

Until further notice, United States dollar currency, overprinted "Hawaii" and United States coins will be legal tender in the occupied territory and all persons are warned against accepting or dealing in any other currency whatever, except as permitted under my orders.

VI.

So long as you remain peaceable and comply with the orders of the United States forces of occupation, you will be subject to no greater interference than is made necessary by war conditions, and may go about your normal occupations without fear.

VII.

Further proclamations and orders will be issued by me or under my authority from time to time. They will state what is required of you and what you are forbidden to do and will be displayed at police stations and in your villages.

C. W. NIMITZ,

Admiral, United States Navy,
Commander in Chief,

United States Pacific Fleet and
Pacific Ocean Areas

Military Governor of the Marshall Islands.

◦ Date: 31 January 1944.

Star-Bulletin 2-4-44.

[Endorsed]: Filed 4-20-44.

PETITIONER'S EXHIBIT "J-5"

GEN. RICHARDSON SAYS
HAWAII'S COOPERATION
IMPORTANT IN THE WAR

(Following is the text of the address by Lt. Gen. Robert C. Richardson Jr., commanding the Hawaiian department of the army, and military governor of the territory, at the quarterly luncheon meeting of the Honolulu Chamber of Commerce today.)

[Stamped]: Jul 15 1943

It was with a great deal of hesitancy that I consented to address the chamber of commerce today. Not that I am not very appreciative of the honor you have done me as representative of the army, but because of my deep conviction that it is better for general officers to perform rather than predict. Like the old saw relative to children, they should be seen and not heard.

In time of peace our people are not interested very much in their army and navy and the public regard their generals and admirals with mingled feelings of curiosity and amusement.

Their opinions are rarely sought and their influence is negligible.

When war comes, however, the story is different, and the people are suddenly interested in the men who are to lead the armed forces and safeguard the country, as what these leaders do and say often has a great impact on the life of the nation.

They are charged with great responsibilities, of

Petitioner's Exhibit J-5—(Continued)

which the greatest is to lead their troops successfully in battle.

"Who are these men," you ask yourselves quite naturally, "to whom we have given our fortunes and our sons so that they may save our civilization? What are they doing and what have they accomplished?"

* * *

'Where Do We Stand?'

This thought prompted me to try to summarize our position in the subject: "Where Do We Stand?"

Many men much more learned than I have explained the reasons why we are in this war. They all boil down to our determination to defend what we have which Germany and Japan threatened to take away from us.

Fundamentally, the basic reasons are economic, the truth of which can best be revealed by a simple statement made by a Roumanian officer to me some years ago.

OUR GROWTH. Time is rushing on so fast and so many events fill our lives that we are apt to forget how unprepared we were just three short years ago.

To appreciate where we stand today we must recapture where we stood only recently and cast a backward glance at the army's weakness.

In 1920 our regular army numbered 118,000 men only, just about enough to form one army corps,

Petitioner's Exhibit 5—(Continued)

whereas today we have 15 corps, not to mention our armies, task forces, and services.

In 1940, 20 years later, we had 185,000 men of the regular army, supplemented by 120,000 national guard and a corps of 100,000 reserve officers, a derisory number to protect 130,000,000 people.

Only 12,000 regular officers were available to begin the great task of expansion.

Reaching 7,500,000 Mark

Today we are rapidly reaching 7,500,000, of which 2,000,000 are in the air corps, and simultaneously the navy, marines, and coast guard are growing to the respectable figure of 2,000,000, or an over-all figure of nearly 10 million men—one of the largest armed forces in the history of any nation.

To an audience of this character it is unnecessary for me to dwell on the problems involved in this tremendous expansion—problems of food, shelter, construction, clothing, transportation, armament, and equipment, to mention a few.

Some of the problems seemed insurmountable, but the army, navy, business and industry, working together, gradually licked them to such a degree that the armed forces have been able to develop almost rhythmically according to plan.

Shortly after the fall of France our leaders realized that our armed forces were dangerously weak and under the leadership of our president congress authorized calling into service the national guard in

Petitioner's Exhibit J-5—(Continued)
September, 1940, and passed the selective service act in October, 1940.

Canal Protected

Meanwhile, the president threw a protective chain around the Panama canal by the acquisition of bases in the Caribbean sea and in the Atlantic.

We were not yet at war, but as I look back upon these steps in preparedness it seems to me that the nation should be very grateful for the farsightedness of our leaders which gave the nation a running start when we were forced into the great conflict by the disaster at Pearl Harbor.

It is only necessary to compare our condition on December 7, 1941, upon entering the war, with that when we declared war in April, 1917.

In World War I we started from scratch, whereas in World War II we were quite far ahead of the game.

But after Pearl Harbor the nation took a dive into the war and went to town on the preparedness of our army and navy.

* * *

Even though the war department had made many war plans for all eventualities no human being could have foreseen that the modern war would require so many different types of units and that it would be fought all over the world.

Under All Conditions

The character of the war soon showed that our organizations would have to be adapted to fighting

Petitioner's Exhibit J-5—(Continued)

in all climes and under all conditions and therefore the war department was required to develop not only divisions, with their attendant services, but new, strange units—tank corps, airborne divisions, parachute troops, antiaircraft regiments, dive bombers, fighters, heavy bombardment, machine guns, and antiaircraft armament of all calibers and vehicles galore of all types, sizes and shapes—new and strange.

When I see it all today and realize that it has been developed in two and one-half short years it seems that a miracle has taken place in our country.

There have been many miracles in the last two or three years, but I think that without doubt the greatest has been the transformation of our peacetime industry to total war production.

But the mere possession of equipment and raw men by no means makes an army.

The training of these men within their new organizations was a very difficult problem; first, because our people fundamentally are opposed to what is known as armed discipline.

They are naturally afraid of regimentation or living a regulated life.

Followed Public Opinion

In the early days of the training of the army the leaders of the army were forced to follow public opinion, which seemed to insist that new men coming into the army should be treated almost gently.

We looked upon it as an age of pampering and

Petitioner's Exhibit J-5—(Continued)

coddling, and were dismayed and chagrined at the thought that perhaps Americans had become soft.

But we quickly found that the men themselves detested that attitude and with few exceptions welcomed the most Spartan discipline which has always characterized the army and without which long experience has taught us battles can not be won.

* * *

As illustrative of the effect of such coddling on our soldiers I recall an actual happening in connection with a sentry on guard.

As all of you know, whenever a strange person approaches a sentry post at night the sentry is required to challenge him in good resounding English, "Halt, who goes there?"

But in this early army we were developing the sentry on duty, perhaps under the spell of the age of pampering, cried, "Halt, who is this please?"

It was not long, however, before our new army realized what was meant by the word "discipline."

Value of Discipline

They quickly found that it is disassociated entirely from punishment and is synonymous with good training. A disciplined soldier is a trained soldier. He observes law and order.

One of the most formidable problems which confronted the army was the training of officers.

Although we had 100,000 reserve officers many of them were classed too old for combat duty and it was necessary to have recourse to officer candidate

Petitioner's Exhibit J-5—(Continued)

schools, in which most of our finest young officers have been developed.

* * *

The mere acquisition of the uniform has nothing to do with making an officer. He has to shed not only his civilian clothes but a certain mental attitude toward life.

He must divest himself largely of expediency and view his work in terms of what is best for the interests of the country.

That is much more difficult than it sounds. It is not until he gets the feel of being a member of a large fraternity which is working for an ideal that he can be characterized as an officer.

Same Influence Necessary

To a lesser degree the same influence is necessary to make a soldier. Until a man has been in the service at least six months and absorbed the ethics of the army—which, after all, are very high—he is unhappy and feels that he is in an alien world.

But once he has acquired the feeling of being a member of a fraternity his whole outlook on the profession changes.

In this new army—which is your army—there has been achieved an amalgam of all the various components. The regular army, reserves, national guard have all been obliterated and now form one army—the army of the United States. In it is all the talent of our country. It represents a mosaic of habits, customs, thoughts of our great land.

Petitioner's Exhibit J-5—(Continued)

Rubbing shoulders are the boy from the country, and the boy from the city, the rich boy and the poor boy, the farmer and the college professor, the chemist, and the welder—all united by the same sense of duty.

Strength Is Felt

Speaking as a commander who has seen the army grow and who for the first two or three years felt its weakness, I can now say with conviction that I am beginning to feel its strength like the strength of a man who has been convalescing and who now feels the warm blood of health running through his veins and urging him to try his powers.

The army is now becoming seasoned and acquiring maturity and it represents today an institution which is full of virility and in which our American manhood is being reborn.

This great army which I have attempted to describe is fighting on battlefronts all over the world which do seem fantastic when the list is called: Guarding the Panama canal we have troops in the Bahamas, Cuba, Panama, Antigua, Santa Lucia, Trinidad, Curacao, British Guiana, Guatemala.

* * *

In the Atlantic further north we have them occupying the Bermudas, the North Atlantic, Newfoundland, Greenland, Iceland, Great Britain.

Farther south, Africa and Islam, North Africa, and now Pantelleria, Lampedusa, Sicily.

Again we have them in Trans-North Africa, West Africa, Eritrea, Egypt, Iraq, Iran, Indo-China, In-

Petitioner's Exhibit J-5—(Continued)

dia, Burma, China. Again in the southwest Pacific, Australia, New Guinea, Woodlark, Trobriand islands, Solomons, Fijis, Tahiti and other islands too numerous to mention, all looking toward Hawaii as their supporting base.

World Strategy

The world strategy decided upon by the leaders has necessitated the occupation of all these islands by our troops. It is no secret that our compass has been set to defeat Germany and Italy first.

Europe is being encircled by a great steel ring and I do not mean a Nibelungen ring. We are now on the perimeter, slowly closing the ring around the continent.

When that has been accomplished and Germany and Italy fall, the weight of the United Nations will be turned to the Pacific.

* * *

In the meantime the Pacific has undergone in the last few months an extraordinary development. Without mentioning any names of islands, this whole great area is a series of magnificent bases from which our aircraft can operate and which form a great line of communications to Australia.

From a trickle of planes which passed through here one years ago a stream has developed, and we are looking forward to the not too distant future when that stream will become a torrent.

At the present moment the offensive has been grabbed by us from the Japanese and instead of

Petitioner's Exhibit J-5—(Continued)

being on the receiving end we are now on the giving end and are hammering at the defensive perimeter. Slowly but surely the center of gravity of operations is moving north and northwest toward Japan, with the idea of depriving her of her airbases.

Not Basis of Judgment

In this area your interests naturally are centered on the war against Japan.

Many of you in this audience know the Japanese profoundly, but your association with them in Hawaii does not furnish a basis to judge them on the field of battle.

From all the reports that have reached me they are a resolute, resourceful, determined and cruel enemy.

They are relentless and indoctrinated with military ardor to the point of fanaticism.

Their psychology has been determined by years of indoctrination that the soldier represents the highest expression of man's occupational life.

Nearly all of the nations throughout history have rather despised their soldiers and looked upon them as mercenaries.

But the Japanese have always extolled the armed forces.

* * *

Proverbs Show Attitude

Although the Chinese are emerging from their former contempt of soldiers, a reading of their early proverbs gives an insight into their attitude.

Petitioner's Exhibit J-5—(Continued)

As they formerly said, "Good iron is not for nails nor good men for soldiers." Or again, "It is better to have no son than one who is a soldier."

Even the Germans who today extol their soldiers, said, "Soldiers deserve to be well paid and well hanged."

And the French, who have always looked down on the professional soldier, remarked "Old soldier, old idiot."

And even the Russians, in their proverbs, speak contemptuously: "Flog two to death and train one."

But the Japanese say, "Among flowers the best is the cherry blossom; among men the best is the soldier."

It is that psychology that makes the Japanese soldier a formidable foe.

With the increased tempo of the war in this area, Hawaii becomes more important than ever as a great base and a support of future operations against the Japanese.

* * *

Must Remain on Alert

We must not, however, allow ourselves to become overconfident or feel that we can be less alert because we read in the papers that our navy has sunk four more warships or that our army has taken a few more island bases.

The people here must realize and understand that they are in a war zone, where anything can happen, any day, at any time.

Petitioner's Exhibit J-5—(Continued)

Our enemy is resourceful and in my judgment will leave no stone unturned to humiliate us even at great sacrifice to himself and he would be willing to risk a great deal and gamble with his assets if he could inflict destruction upon even a part of these islands.

The location, therefore, of the islands in the war zone has subjected the people of this territory to military law, which is nothing else than the law of necessity.

I realize that it is natural for civilians, who are not accustomed to any control by the military, to chafe under military law, but let me put it before you in this light: Is it better to satisfy one's personal feelings and do without military law than to live in the knowledge that it is done for the safety of our country?

* * *

Weigh Personal Desires

At a time like this it is essential that every citizen weigh his personal desires, his business profits, his decisions, all in terms of the interest of our country.

The people of the territory have been most patriotic in acquiescing to martial law and have supported the general orders in a manner that calls for great praise.

Last March there were returned to the civil authorities many of their normal functions, but it was found necessary to retain under the control of the military governor the labor engaged upon army

Petitioner's Exhibit J-5—(Continued)
and navy contracts and certain public utilities and the stevedores.

This labor is as vital to the success of our armed forces as are the soldiers and sailors.

War is not waged by men in uniform alone. They can do nothing unless backed by civilian labor.

Therefore, I regard this labor as an integral part of our team and I wish to take this opportunity of paying great tribute to the men and women who are working so cheerfully and so helpfully upon all of our projects.

Justice For Labor

Labor can rest assured that the military authorities are just as much interested in their welfare and in seeing that justice is done them as they are in the welfare of the soldiers and sailors.

It was because of this great cooperative spirit existing among the people of the islands, coupled with the seizure of the offensive in the Pacific by our armed forces, that I feel justified in easing up on the hardships of the blackout.

* * *

I feel confident that together we can work out this problem so that life will be more pleasant and more bearable without relaxing in any degree our alertness and the regulations for our security.

But we must all work together. As I have said before, one man can do very little, but together we can a lot.

Petitioner's Exhibit J-5—(Continued)

Contribution to Defense

In this connection I should like to leave the thought that whatever is done should be viewed as a contribution to our country's defense and not as something done as a favor to institutions called the army or the navy.

Those institutions are YOUR institutions. You PAY for them and they belong to you.

They are composed of your fathers, your sons, and your brothers and you should never refer to them as THE army or THE navy but you should now refer to them as OUR army and OUR navy.

The cooperation which has existed in this community has been splendid—by business, by industry, by professions, and by labor, and with this continued cooperation we can beat the Japanese and save our civilization.

* * *

Americans should be willing to sacrifice for America. We owe so much to our great country, which has been so generous to each and every one of us.

We should be willing to sacrifice to preserve the character of our people and our civilization.

Americans Most Generous

Of all the people that I have seen I say without hesitation that as a nation we are the most generous, the most tolerant, the most understanding, the most unselfish, the most Christian in outlook. Those are our good qualities.

But we have some very poor qualities which I am afraid have already done us harm and will do

Petitioner's Exhibit J-5—(Continued)

us greater harm in the future unless we correct them.

As a race we are naive, a little gullible, and we do not think far enough in the future.

Life has been good and kind to us and we have not been forced to give too much attention to the destiny of our country.

The experiences, however, which our men are having in this war should be a liberal education and at the same time a sobering influence. They are living in an atmosphere of morality and moral principles, and I hope that their experience will cause them to reaffirm their faith.

When the war is over I hope that we can utilize the army as a great school of citizenship. You can call it universal military training, if you wish, but my idea goes beyond the purely military development and encompasses a field in which our men giving a year's service in the army are taught the history of our country and the best means of preserving our democratic principles.

There is no militarism whatsoever in the American army and I hope that there never will be.

We must study our problem and be ready and develop a plan not for today but for the next generation.—Star-Bulletin

[Endorsed]: Filed 4-20-44.

PETITIONER'S EXHIBIT "J-6"

Gen. Richardson To Take Command Here

Replaces Gen. Emmons Who Goes to Duty
At Another Post

[Stamped]: May 27 1943

At his final press conference in the "little White House" in Iolani palace grounds this afternoon, Lt. Gen. Delos C. Emmons, commanding the Hawaiian department and military governor, announced he is leaving for a new command.

As his successor, he announced Maj. Gen. Robert C. Richardson Jr., who will take over in a few days.

Gen. Emmons said he has "a slight idea where his new command will be but that it is confidential at the moment."

Gen. Richardson attended the conference and was introduced to correspondent Maj. Harry Albright of the Hawaiian department public relations office.

In opening the conference, Gen. Emmons said:

"I wish to thank members of the press for their sympathy, cooperation and understanding during my stay in Hawaii.

"Then I want to introduce my successor, Gen. Richardson, and I want him introduced personally to all the correspondents present. He will take over in a few days.

"I have an aloha message for all of you," he said.

Aloha Message

His aloha message follows:

"People of Hawaii: Seventeen months have now passed since that fateful day in December, 1941, when war came suddenly to our country in direct violation of the protestations of the attacker.

"On December 17, 1941, by direction of the President, I arrived and assumed command of the Hawaiian department, and became the military governor of the territory.

"It is now with sincere regret that I announce my departure from Hawaii to another area, the location of which I may not as yet disclose.

"My tour of duty has given me the privilege of leading troops of all arms and of associating on an intimate basis with many officers and men of the navy and the marine corps.

Pleasant Experience

"As the executive head of the government under martial rule, I have dealt with many hundreds of civilians of all classes.

"Viewing the past year and a half in retrospect, it is the most pleasant experience I have ever had.

"Many factors have contributed to that result, but mention may be made of only a few in particular.

"The officers and men of the Hawaiian department are entitled and have my sincere appreciation and gratitude.

"They have given me their loyal support and untiring efforts and their consistent cooperation.

"I know that by reason of their training, physical

fitness, equipment and fine leadership they are ready to fight as ably and courageously as any similar group in our army.

Thanks to Navy

"The great naval installations on Oahu required the presence here of a large contingent of naval, marine and coast guard personnel."

"I desire publicly to express to Admiral Nimitz and to the splendid officers and men of the navy and its allied services my thanks for their assistance and cooperation during the period of military rule in the territory.

"Our sister service in this war as always is proving itself worthy of leave taking the tremendous it.

"I can not overlook at this time of all the fine tradition peculiar to amount of work which has been done by the women of this community in the past 17 months.

Praise for Women

"Many hundreds of women have done emergency work—oftentimes difficult and strenuous—to provide needed hospital facilities, office assistance, clerical work and recreation, for the members of the armed forces.

"These women have earned the gratitude of the men who have benefited by their generous and willing efforts.

"The task of building fortifications, airfields, roads and military installations has been immense.

"We asked and received the services of thousands of men, in-

"Our sister service in this war as always is proving itself worthy of leave taking the tremendous it.

"I can not overlook at this time of all the fine tradition peculiar to amount of work which has been done by the women of this community in the past 17 months.

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"Many hundreds of women have done emergency work—oftentimes difficult and strenuous—to provide needed hospital facilities—office assistance, clerical work and recreation, for the members of the armed forces.

"These women have earned the gratitude of the men who have benefited by their generous and willing efforts.

"The task of building fortifications, airfields, roads and military installations has been immense.

"We asked and received the services of thousands of men, including those essential to plantation operation, to do these jobs.

"Speed was one of the prime essentials in order to attain a reasonable military security for the islands at the earliest possible date.

"Civilian war workers have completed many of their projects ahead of schedule.

In Splendid Fashion

"In giving you my aloha may I say that you have conducted yourselves in this emergency in our country's life in a splendid fashion."

"My task was a difficult one in many ways. It would have been doubly so had it not been for the

wholehearted support and cooperation of former Governor Poindexter, Governor Stainback and all of the federal and civil officials and the public as a whole.

"The people of Hawaii have set an example for the nation to follow. To them I express my deep appreciation for their confidence and the hope that I have not failed them.

"I wish for you all—soldiers, sailors, marines and civilians—the best of everything in life.

"May the time soon come when these delightful islands may once more enjoy a peaceful routine of life, undisturbed by the threat of aggression from a ruthless, lawless and godless enemy."

In the transfer to new duties, it is believed here that the outstanding record that Gen. Emmons has made as commanding officer of the Hawaiian department is recognized.

It is indicated also that the special work of preparing Hawaii against imminent danger of attack, on which the selection of Gen. Emmons was partly made just after the "blitz" of December 7, 1941, has been largely completed.

West Point Graduate

Gen. Richardson was born October 27, 1882, in Charleston, S. C. He is now 61 years old.

He attended the College of Charleston from 1898 to 1900. In 1904 he was graduated with a B.S. degree from West Point.

In 1905 he saw action as a lieutenant against the Moros in the Philippines. He was given the Silver Star decoration for gallantry in the campaign.

From 1906 to 1911 he was an assistant instructor in modern languages at West Point.

He left the academy for duty with the 23rd infantry regiment in Texas until 1914. He returned to West Point to become an assistant professor in English from 1914 to 1916.

In 1916 he married Lois Elbertine Farman. They have a son, Robert Charlwood III.

During World War I he served as a liaison officer in the AEF and held the rank of lieutenant colonel.

As a result of this, he was awarded the Distinguished Service Medal for notable military attainments with the AEF in France.

Attended Peace Parley

After the war he was with the 3rd army of occupation at Coblenz, Germany. He was on the reparations board in France and attended the peace commission in Paris.

Gen. Richardson was graduated from the French war college and was appointed military attache at the U. S. embassy in Rome, where he became acquainted with Mussolini.

He has held many important army posts in his military career. He was commandant at West Point, commander of the 5th cavalry at Ft. Clark, Tex., commander of the 1st cavalry division at Ft. Bliss, Tex., commander of the cavalry school at Ft. Riley, Kan., and, in 1941, he was director of the public relations bureau of the war department.

Many Decorations

Gen. Richardson has been awarded the following decorations:

Distinguished Service medal, Allies victory medal with three stars, Purple Heart, Silver Star (U.S.); Croix de Guerre with palm, Officer Legion of Honor (France); Order of Leopold, (Belgium);- Officer Order of St. Maurizio and St. Lazarus (Italy); and Officer La Solidaridad (Panama).

Gen. Richardson also wrote a book, West Point—An Intimate Picture of the National Academy.

He is a member of the Ends of the Earth club, New York; Army and Navy club, Washington and Manila, and the Army & Navy Country club, Arlington, Va.

He is a member of the Episcopal church.

From West Virginia

Gen. Emmons was born January 17, 1888, in Huntington, W. Va.

Upon graduation from West Point in 1908 he was appointed a second lieutenant of infantry.

His services prior to the World war included duty with infantry troops at the Presidio, San Francisco, Cal.; at Ft. Gibbon, Alaska; at Plattsburg barracks, N. Y., and on the Mexican border during frontier disturbances of 1916-17.

Shortly after the entrance of the United States into the World war, he was detailed with the aviation—Star Bulletin.

[Endorsed]: Filed 4-20-44.

PETITIONER'S EXHIBIT "K"

(Copy of Petition)

November 30, 1940.

Honorable Cordell Hull,
Secretary of State,
Washington, D. C.

Dear Mr. Secretary:

We, the undersigned, are American citizens of Japanese ancestry, born under the United States flag. By virtue of our birth on American soil we are American citizens, according to the laws of these United States. At the same time, according to the citizenship laws of Japan, we were born Japanese citizens because our parents were subjects of Japan. We were thus born with a dual citizenship status, owing to the operation of two types of citizenship laws.

We have grown up as Americans in mind and spirit with loyal devotion in our hearts to this land of our birth. Many of us, indeed, were unaware that we were claimed as citizens by another government, being in this respect like other Americans who, quite unknown to many of them, are likewise claimed by the nation of their foreign-born parents.

By action of the Government of Japan in 1924, a procedure of expatriation from Japanese citizenship has been provided, and a substantial number have been duly expatriated. We wish to call to your attention, however, that the expatriation procedure is complicated and cumbersome, entailing involved

correspondence and long waiting. In many individual cases the technical difficulties are appalling, and in numerous instances more than a year elapses before the action is at long last completed. Some of the older members of our group have found it well-nigh impossible to secure the witnesses required for the issuance or validation of birth certificates, without which expatriation applications cannot be filed, so that no matter how much they may desire to be expatriated from the Japanese nationality they cannot realize their wish. Many have been deterred from taking the necessary steps for expatriation because of the cumbersome and sheer difficulty of the procedure, or because they are unwilling to recognize a claim upon them by any government other than that of the United States.

As a result, an appreciable number of Americans of Japanese ancestry are still left in the undesirable status of dual citizens. This is a situation of personal distress and inconvenience to the individuals concerned, resulting in tension and misunderstanding and bringing upon the heads of us Americans of Japanese ancestry much undeserved and unwarranted suspicion on the part of some of our fellow citizens.

We realize just as clearly as any of our fellow Americans that it is of the utmost importance that the nation be united in loyal thought and action, particularly in times of emergency or crisis; and we regard ourselves as the equal of any of our fellow Americans in the sincerity and intensity

of our allegiance to this land of our birth and the Stars and Stripes that symbolize our great nation.

Therefore, we respectfully address this petition to you, requesting that you exercise your good offices to the end that an arrangement be reached with the Government of Japan which will provide a more simple procedure of expatriation from the Japanese nationality.

Respectfully yours,

Petition To The Secretary Of State

United States Of America

Signature

Address

.....
.....

[Endorsed]: Filed 4-20-44.

PETITIONER'S EXHIBIT "L"

Territory of Hawaii

Office of the Military Governor

Iolani Palace

Honolulu, T. H.

25 August 1943

General Orders

No. 31

HABEAS CORPUS PROCEEDINGS AND INTERFERENCE WITH MILITARY PERSONNEL IN PERFORMANCE OF MILITARY FUNCTIONS PROHIBITED.

1. Purpose.

1.01. This General Orders is issued to eliminate, prevent, and prohibit interference with military personnel in the performance of their military functions or duties within the Territory of Hawaii, and to eliminate, prevent, and prohibit interference with military operations within the Territory of Hawaii, and thereby to further the defense and internal security of the Territory of Hawaii.

2. Habeas Corpus Proceedings Prohibited.

2.01. No clerk, deputy clerk, other officer, or employee of the District Court of the United States for the Territory of Hawaii, or of any court of the Territory of Hawaii, shall accept or receive for filing in such clerk's office, deposit for filing, or file, or allow, authorize, or permit to be deposited for filing, or to be filed in such clerk's office, or with such clerk, any application or petition for a writ of habeas corpus, or make, issue, or execute

any summons, citation, decree, order, or other process in any habeas corpus proceedings.

2.02. No judge of the District Court of the United States for the Territory of Hawaii or of any other court of or within the Territory of Hawaii, shall accept or receive for filing with, in, or before such judge or court, or in the office of the clerk of such court, or with such clerk, deposit for filing or file or allow, authorize, order, or permit to be filed with, in or before such judge or court, or in the office of such clerk or with such clerk, any application or petition for a writ of habeas corpus.

2.03. No judge of the District Court of the United States for the Territory of Hawaii or of any other court of or within the Territory of Hawaii, shall authorize, allow, decree, order, direct, or permit any habeas corpus proceedings to be commenced, maintained, or prosecuted before or by such judge or in or before the court in or over which such judge sits or presides; nor shall any such judge maintain, prosecute, hear, try, or determine in whole or in part, any habeas corpus proceedings or any phase of, or matter related to or in any way connected with, any habeas corpus proceedings.

2.04. No judge of the District Court of the United States for the Territory of Hawaii or of any other court of or within the Territory of Hawaii, shall issue any writ of habeas corpus, order that any writ of habeas corpus issue or be issued, or authorize, direct, permit, or allow any writ of habeas corpus to issue, or be issued, from

the court over which or in which such judge presides or sits, or from the office of the clerk of said court, or by the clerk of said court.

2.05. No person, either in his own behalf or as attorney, agent, or in any way for or on behalf of another person, shall present to, file or attempt to file, or deposit for filing, any application or petition for a writ of habeas corpus; to or with the clerk, deputy clerk, a judge, other officer, or employee of the District Court of the United States for the Territory of Hawaii, or of any court of or within the Territory of Hawaii; nor shall any person either in his own behalf or as attorney, agent or in any way for or on behalf of another person, commence, maintain, or prosecute any habeas corpus proceedings in or before the District Court of the United States for the Territory of Hawaii or in or before any other court of or within the Territory of Hawaii.

2.06. Neither the United States Marshal for the Territory of Hawaii, any deputy or employee of such marshal, or any other officer or employee of the District Court of the United States for the Territory of Hawaii, or of any other court of or within the Territory of Hawaii shall accept or receive for service an application or petition for a writ of habeas corpus or copy thereof, or any writ of habeas corpus, any summons, citation, order, decree, warrant, or process of any kind in a habeas corpus proceedings; nor shall the United States Marshal for the Territory of Hawaii, any deputy of such marshal, or any other officer or employee

of the District Court of the United States for the Territory of Hawaii, or any officer or employee of any court of or within the Territory of Hawaii, serve or attempt to serve any application or petition for a writ of habeas corpus or copy thereof, or any writ of habeas corpus, or any summons, citation, mandate, decree, order, warrant, or process of any kind in a habeas corpus proceedings or issued or arising out of any matter or proceeding related to or in any way connected with a habeas corpus proceedings.

2.07. Any judge of the District Court of the United States for the Territory of Hawaii, or of any other court of or within the Territory of Hawaii, before whom a habeas corpus proceedings now is pending, shall forthwith discontinue such habeas corpus proceedings, and shall not maintain or prosecute, or allow, permit, or authorize to be maintained or prosecuted before such judge or the court in which such judge sits or presides, such habeas corpus proceedings any further, and hereafter shall not hear, try, or determine said habeas corpus proceedings or any phase of or matter related to or in any way connected with or arising out of such habeas corpus proceedings; nor, except as authorized in paragraphs 2.08 and 2.09 herein, shall any such judge hereafter issue any order, decree, mandate, summons, citation, warrant, or process of any kind in any such pending habeas corpus proceedings, or in any matter, action, or proceedings arising out of, related to, or in any way connected with any pending habeas

corpus proceedings; and such judge forthwith shall withdraw, revoke, and rescind any order, decree, mandate, summons, citation, warrant, or process of any kind, remaining unexecuted in any pending habeas corpus proceedings or in any matter, action, or proceedings arising out of, related to, or in any way connected with any pending habeas corpus proceedings.

2.08. Neither the Honorable Delbert E. Metzger, Judge, District Court of the United States in and for the Territory of Hawaii, nor any other judge of the said District Court of the United States in and for the Territory of Hawaii, shall make or issue, or order, direct, or cause to be made or issued, any process, mandate, summons, citation, order, decree, decision, determination, direction, or action in or relative to, or arising out of, by reason or because of, that certain habeas corpus proceedings now pending in the District Court of the United States in and for the Territory of Hawaii substantially styled or entitled as follows: "In the Matter of the Application of Walter Glockner," and bearing file or identification number or mark "H. C. 295," in the office of the Clerk of the District Court of the United States in and for the Territory of Hawaii. The said Delbert E. Metzger, Judge, District Court of the United States in and for the Territory of Hawaii, forthwith and immediately shall stay, refrain from, cause to be stayed, and desist from, all pending or further action or proceedings in said habeas corpus proceedings, or in any matter, action, or proceedings.

arising out of, related to, or in any way connected with, such pending habeas corpus proceedings.

2.09. Neither the Honorable Delbert E. Metzger, Judge, District Court of the United States in and for the Territory of Hawaii, nor any other judge of the said District Court of the United States in and for the Territory of Hawaii, shall make or issue, or order, direct, or cause to be made or issued, any process, citation, order, decree, decision, determination, direction, or action in or relative to, or arising out of, by reason or because of, that certain habeas corpus proceedings now pending in the District Court of the United States in and for the Territory of Hawaii substantially styled or entitled as follows: "In the Matter of the Application of Erwin R. Seifert, "and bearing file or identification number or mark "H. C. 296," in the office of the Clerk of the District Court of the United States in and for the Territory of Hawaii. The said Delbert E. Metzger, Judge, District Court of the United States in and for the Territory of Hawaii, forthwith and immediately shall stay, refrain from, cause to be stayed, and desist from, all pending or further action or proceedings in said habeas corpus proceedings, or in any matter, action, or proceedings arising out of, related to, or in any way connected with, such pending habeas corpus proceedings.

3. Interference with Military Personnel Prohibited.

3.01. No judge of the District Court of the United States for the Territory of Hawaii, or of any

court of the Territory of Hawaii, no United States Marshal for the Territory of Hawaii or his deputy, nor other public officer, deputy of such public officer, public employee, or any other person, shall, for any cause, whether or not such cause is deemed lawful cause by such judge, or other public officer, public employee, or any other person, in any manner, way, or form impede, oppose, or interfere with The Commanding General, United States Army Forces, Central Pacific Area, or with any other member of the armed forces of the United States, in his performance of his military functions, military duties, or military orders, or in his performance of any orders heretofore or hereafter issued by the Military Governor of the Territory of Hawaii, regardless of whether or not such order or orders are published in the newspapers of the Territory of Hawaii; provided, however, that nothing contained in this paragraph shall be construed or deemed to prohibit municipal police officers from arresting members of the armed forces for traffic offenses triable by the Provost Courts.

4. Provisions of this General Orders to be Liberally Construed.

4.01. Except where otherwise clearly indicated, in addition to being applicable to habeas corpus proceedings hereafter commenced, the provisions of this General Orders shall be applicable to habeas corpus proceedings heretofore commenced and now pending in the District Court of the United States for the Territory of Hawaii or in any other court of the Territory of Hawaii. The provisions of

this General Orders shall be liberally construed so that the purposes for which this General Orders is issued, set forth in Paragraph 1.01, may be fully effected and accomplished.

5. Penalties.

5.01. Any judge of the District Court of the United States in and for the Territory of Hawaii, any United States Marshal or Deputy United States Marshal in and for the Territory of Hawaii, or any other public officer, deputy of such other public officer, public employee, or any other person, who directly or indirectly, expressly or impliedly, in any manner, shape, or form, shall violate, attempt to violate, evade, or attempt to evade, or aid, assist, or abet, in any violation of, any provision of this General Orders, upon conviction thereof by a Provost Court heretofore or hereafter appointed by the Military Governor of the Territory of Hawaii, shall be punished by confinement, with or without hard labor, for a period not to exceed five (5) years, or by a fine not to exceed five thousand dollars (\$5,000.00), or by both such confinement and fine, or if convicted thereof by a Military Commission heretofore or hereafter appointed by the Military Governor of the Territory of Hawaii shall be punished as such Military Commission shall determine.

6. Issuance of this General Orders is Necessary Exercise of Martial Law Powers of Military Commander in This Theater of War.

6.01. This General Orders is issued by the undersigned as the Military Governor of the Territory

of Hawaii and as the Military Commander of the military forces of the United States in this theater of war in which martial law duly has been established and exists. This General Orders is a necessary exercise of the martial law powers of the undersigned as Military Commander of the military forces of the United States in this theater of war.

S/ ROBERT C. RICHARDSON, JR.

Robert C. Richardson, Jr:

Lieutenant General, United
States Army

Commanding General, United
States Army Forces, Central
Pacific Area

Military Governor of the Ter-
ritory of Hawaii

A True Copy:

WM. R. C. MORRISON

Wm. R. C. Morrison

Colonel, J. A. G. D.

Executive

[Endorsed]: Filed 4-20-44.

PETITIONER'S EXHIBIT "M"

THE VOLUNTEER

[Printer's Note: Only the text of the pamphlet following is reproduced, the pictures and captions under the pictures being omitted.]

The Editor and His Staff Present

THE VARSITY VICTORY VOLUNTEERS

"Determined to undertake any task assigned to them in the line of their duty and responsibility as American citizens, one hundred fifty young Hawaiian Born Japanese who had been immobilized from the territorial guard volunteered their services en bloc to army authorities the other day.

They were students from the University of Hawaii who had decided to "Do Something Practical" in demonstrating their undivided allegiance to the United States and their loyalty to their flag and the ideals for which it stands.

Many of them made great sacrifices in abandoning their plans for higher education but they considered that the call of their country was of vastly more importance than any selfish ambition or desire for personal advancement."

Editorial in *Hawaii Herald*

February 28, 1942

PROLOGUE

"This is more than an incident for passing notice.

It is an illustration of one of manifold ways in which Americans of Japanese ancestry can serve their country in time of emergency.

Petitioner's Exhibit M—(Continued)

These times are, admittedly, difficult for Americans of Japanese parentage.

The remedy for their difficult situation is basically with these young Americans of Japanese ancestry themselves.

They must, first, realize the fact that the militaristic regime of Japan has forced this situation on them and on all Americans.

Second, they must accept the further fact that there is bound to exist, particularly among Americans who have had little to do with this "second generation" a degree of uncertainty as to their attitude in time of dire emergency.

Third, they must conduct themselves loyally and with absolute regard for the spirit and the letter of our laws and regulations, bearing cheerfully the inconveniences to which they may be put.

Fourth—and this is highly important—they must do as this group of 155 young citizens has done—seek out and find a way to serve their country and their community in this emergency.

It is one thing to accept passively a difficult situation which irks and burdens and grieves you. It is another thing—a better and finer thing—to take the initiative in finding ways and means to be a definite usefulness—to be an active and not a passive citizen of our republic in wartime."

Editorial in Honolulu Star-Bulletin

February 25, 1942

Petitioner's Exhibit M—(Continued)

HISTORY

The history of this organization dates back to that black and fateful Sunday of December 7, 1941. When the University of Hawaii ROTC was called out in the emergency that day and organized into the Hawaii Territorial Guard, many of the present members enlisted. For two months these boys fulfilled the responsibilities of guarding and protecting the vital utilities and installations of the territory through the crisis. Then, a bombshell burst on January 19, 1942 and all members of Japanese ancestry were inactivated from the services of the Guard with honorable discharges.

This was indeed a terrible blow. These boys had served with loyal and earnest endeavor and with pride in being able to do their part for their country. Now, they had been told that their services were no longer needed.

After the first wave of bitter disappointment and frustration had passed, they realized that it was no time to sit passively and bemoan their grievous situation when, instead, they could actually be searching for other ways and means to serve their country; that in their country's darkest hour of need and danger, they must prove themselves useful in some other phase of the war effort.

One day during their period of ferment, a small group of those discharged from the HTG met with a few interested and sympathetic civic leaders and in the ensuing discussions, the deep-seated desire

Petitioner's Exhibit M—(Continued)

of these boys to contribute their services to the war effort now augmented by another burning desire to demonstrate their Americanism to dispel all doubts of their loyalty and sincerity, were plainly manifested. The next question was, "What were they going to do about it?"

Yes, the boys decided to do something about it; to do something in terms of bold, concrete action—no amount of words could ever prove equal. They decided to petition the military governor to explain their peculiar situation and to offer themselves unconditionally for whatever helpful service they could contribute toward the defense of their homeland and toward the winning of the war. Thus a petition was drawn up and plans for meeting and organization were formulated, all done with due notification to proper authorities.

There were clouds of doubt and suspicion that had to be cleared from ignorant and hysterical minds by strong, active deeds, not mere spoken words of loyalty and oaths of allegiance.

Therefore, a meeting was called to mobilize as many of the former Guardsmen as possible attending the University and those in town, and the petition, after much discussion and explanation of the critical position of the Japanese in Hawaii, was presented for their approval and acceptance. This petition, signed and presented to the military governor, Lt. General Delos C. Emmons, appears as follows:

Petitioner's Exhibit M—(Continued)

Honolulu, T. H.

January 30, 1942

Lt. Gen. Delos C. Emmons

Commanding General, Hawaiian Department,
U. S. A.

Fort Shafter, T. H.

Sir:

We, the undersigned, were members of the Hawaii Territorial Guard until its recent inactivation. We joined the Guard voluntarily with the hope that this was one way to serve our country in her time of need. Needless to say, we were deeply disappointed when we were told that our services in the Guard were no longer needed.

Hawaii is our home; the United States, our country. We know but one loyalty and that is to the Stars and Stripes. We wish to do our part as loyal Americans in every way possible and we hereby offer ourselves for whatever service you may see fit to use us.

Respectfully yours,

The general was very pleased with the gesture and accepted the boys as a labor corps under the Hawaiian Department Arm Engineers, to be housed as a unit and to work in conjunction with the army engineers. Then followed a scant one day notice for preparation and mobilization in which they left their jobs and withdrew from classes to answer the call, and on the morning of February 25, 1942, a group of volunteers, calling

Petitioner's Exhibit M—(Continued)

themselves the "Varsity Victory Volunteers," assembled on the steps of Hawaii Hall, on the campus of the University of Hawaii, to be tendered with a simple aloha ceremony by civic leaders, college officials, instructors, and former classmates of the University.

ORGANIZATION

The organization of the Varsity Volunteers is a unique, complicated, and pyramided integration of several bodies.

First, the organization is officially known as the Corps of Engineers Auxiliary, attached as a company to the 34th Combat Engineers Regiment; and therefore directly responsible to the U. S. Army Corps of Engineers. The pride of the organization is the splendid and efficient Army Personnel. The Commanding Officers are Lt. Colonel William Sexton, 34th Combat Engineers Regiment, and Capt. Richard Lum, Corps of Engineers Auxiliary. Company Commander Capt. Lum is ably assisted by Executive Officer Lt. Thomas Kaulukukui and Master Sergeants George Aikan and William Jarrett.

Second, the men are employed under Federal Civil Service Regulations.

Third, the members are divided into twelve work gangs, each under the leadership of an elected foreman. These squad foremen are "lorded" over by Supervisor Ralph Yempuku and his assistant, Ted Tsukiyama. The foremen concern themselves chiefly with the supervision of the work projects

Petitioner's Exhibit M—(Continued)

and meet with the Army Personnel every Thursday evening to exchange ideas. Squad foremen are Richard Chinen, Junichi Buto, Richard Yamamoto, Unkei Uchima, Harry Tanaka, Masato Doi, Suke-yoshi Kushi, Chiyoki Ikeda, Masaichi Sagawa, Claude Takekawa, Robert Kadowaki, and Henry Oyasato.

Fourth, every first Monday of a month, a general meeting is called to order by Supervisor Ralph Yempuku. The minutes of the meetings are kept by the elected secretary, Katsumasa Tomita, and the Company Fund is in the custody of the able treasurer, Henry Oyasato.

Equality is the Keynote of this assembly and foremen, army personnel, laborers, debate, discuss, and disagree. All are privileged to express their views, to make suggestions, and to initiate motions.

For the best interest and welfare of the members, two standing committees have been appointed by the Chairman. These are the Membership Committee, which interviews new members, and the Morale Committee. The last named committee is headed by Shiro Amioka. It promotes and sponsors such activities as monthly ~~and~~ ^{ances}, and essay and oratorical contests. It also investigates complaints and suggests remedies. Other members of the committee are Edward Okazaki, Ted Tsukiyama, Katsumasa Tomita, Herbert Isonaga, Chiyoki Ikeda, Unkei Uchima, David Miura, Yutaka Nakahata, Daniel Betsui, and Takashi Shikuma.

Petitioner's Exhibit M—(Continued)

PERSONNEL

ROSTER OF VVV MEMBERS

Name	Home Address
1. Akimoto, Tamotsu	925-D Robello Lane, Honolulu
2. Amioka, Shiro	518-A Ahui St., Honolulu
3. Amioka, Ted T.	2627 S. King St., Honolulu
4. Aoki, Tsugio	Kona, Hawaii
5. Asano, Fred N.	1820-G Waiola St., Honolulu
6. Betsui, Daniel D.	Hanapepe, Kauai
7. Buto, Junichi	844 Pumehana St., Honolulu
8. Chinen, Jenhatsu	Honouliuli, Ewa, Oahu
9. Chinen, Richard K.	1956 Kilauea Ave., Hilo, Hawaii
10. Doi, Masato	Paaupau, Hawaii
11. Doi, Wallace T.	Port Allen, Kauai
12. Emura, Edward T.	Lahaina, Maui
13. Fujioka, Shigeo	1560 Miller St., Honolulu
14. Fujita, David	1358 Kam IV Road, Honolulu
15. Fujita, Yasuhiro	529-C Malanai Place
16. Fujitani, Atsushi	Kapaa, Kauai
17. Furukawa, Sumu	810 Gulick Ave., Honolulu
18. Goto, Walter R.	Box 33, Station C, Upper Oil Road, Honolulu
19. Hamaguchi, Akira	971-A Robello Lane, Honolulu
20. Hamaishi, Clarence Y.	21 - Dole St., Honolulu
21. Harunaga, Toshio	Box 171, Honokaa, Hawaii
22. Hashimoto, Akira	2455 Huene St., Honolulu
23. Hashizume, Shuichi	Lahaina, Maui
24. Hayashi, Yoshimi	3383 Manoa Road, Honolulu
25. Hedani, Takao	302 N. School St., Honolulu
26. Higa, Warren T.	1730-B Olona Lane, Honolulu
27. Higashino, Edwin T.	1145 15th Ave., Honolulu
28. Himeda, Kikuji	1508-A River St., Honolulu
29. Himoto, Teruo	Box 226, Waialua, Oahu
30. Hirai, Seichi	Box 158, Lanai City, Lanai
31. Hirano, Yoshiyuki	Lanai City, Lanai
32. Hirono, Howard M.	Box 928, Wahiawa, Oahu
33. Hirota, Jyun	4758-H Farmers Road, Honolulu
34. Honda, Edwin H.	Wailuku, Maui
35. Hoshijo, Anki	Hilo, Hawaii
36. Iha, Edward S.	1214 N. School St., Honolulu
37. Ikeda, Chiyoki	1402 Liliha St., Honolulu

Petitioner's Exhibit M—(Continued)

Personnel—Roster of VVV Members—(Continued)

Name	Home Address
38. Ikehara, Minoru	Kalaheo, Kauai
39. Ishihara, Stanley S.....	1253 Hall St., Honolulu
40. Ishii, Shigeru	634 Waiakamilo Road, Honolulu
41. Isonaga, Herbert S.....	Box 185, Koloa, Kauai
42. Iwasa, Walter M.....	Box 527, Wahiawa, Oahu
43. Kadowaki, Robert N.....	2025 Kealoha St., Honolulu
44. Kagawa, Shoso	618 McNeill St., Honolulu
45. Kajihara, Takashi	Lahaina, Maui
46. Kashiwada, James T.....	234 N. School St., Honolulu
47. Kato, Hiroshi	3228 Winam Ave., Honolulu
48. Kawabata, Taketo	Captain Cook, Kona, Hawaii
49. Kawabe, Toshiro	968-A Akepo Lane, Honolulu
50. Kawate, Kenneth K.....	Waimea, Kauai
51. Kikawa, Robert S.....	1223 15th Ave., Honolulu
52. Kimura, Stanley T.....	Box 171, Waipahu, Oahu
53. Kitagawa, Isamu	Kahului, Maui
54. Kobayashi, Roy T.....	894 S. Queen St., Honolulu
55. Kono, Kiyoshi	1246-A Aala Lane, Honolulu
56. Kuniyoshi, Hideo	Box 154, Hilo, Hawaii
57. Kushi, Sukeyoshi	Wailuku, Maui
58. Makino, Hideo	925-B Coolidge St., Honolulu
59. Manabe, Benjamin M.....	Lihue, Kauai
60. Matsumoto, Rance- ford Y.	Hana, Maui
61. Matsunaga, Joseph J.....	Box 756, Wahiawa, Oahu
62. Mayeda, Thomas	1724 9th Avenue, Honolulu
63. Mikami, Yoshiharu	3324 Campbell Ave., Honolulu
64. Minami, Hiroshi	Lawai, Kauai
65. Mita, Wilfred M.....	Box 605, Wahiawa, Oahu
66. Miura, David M.....	Box P, Kapaa, Kauai
67. Miyake, James S.....	Port Allen, Kauai
68. Miyake, Walter S.....	Port Allen, Kauai
69. Miyashiro, Yeiya	Ookala, Hawaii
70. Morisako, Henry H.....	534-A Holokahana Lane, Honolulu
71. Morisawa, Soji	920 Ahana Lane, Honolulu
72. Morita, Tom T.....	Kapaa, Kauai
73. Murata, Robert S.....	1608 McGrew Lane, Honolulu
74. Nagahisa, Henry S.....	686 S. Hotel St., Honolulu
75. Nagaji, Grover K.....	Box 387, Waipahu, Oahu
76. Nagao, Wallace T.....	Halaula, Kohala, Hawaii

Petitioner's Exhibit M—(Continued)

Personnel—Roster of VVV Members—(Continued)

Name	Home Address
77. Nagasako, Melvyn M.	Lahaina, Maui
78. Nagata, Shogo	1103 Pinkham St., Honolulu
79. Nakagawa, Yoshio	714 Kōnawai Lane, Honolulu
80. Nakahata, Yutaka	1014 1/2 Webb Lane, Honolulu
81. Nakama, Henry S.	2445 Ferdinand Ave., Honolulu
82. Nakamine, Roy K.	Makena, Maui
83. Nakamura, Allan I.	Holualoa, Kona, Hawaii
84. Nakamura, Edward H.	1349 10th Ave., Honolulu
85. Nakashima, Shigemitsu	1651 Alaneo Place, Honolulu
86. Namba, Ryoji	254 Moomuku Place, Honolulu
87. Narusaki, Mamoru	Kahaluu, Oahu
88. Nikaido, Thomas T.	964-D Robello Lane, Honolulu
89. Nishikawa, Akio	Paia, Maui
90. Nishimura, James S.	732 7th Ave., Honolulu
91. Nogawa, Raymond K.	57 Holt Lane, Honolulu
92. Nosaka, Seichi	1728 Kam IV Road, Honolulu
93. Oka, George K.	1353 Davis Lane, Honolulu
94. Oka, James I.	Waialua, Oahu
95. Okazaki, Edward Y.	Paia, Maui
96. Okubo, Yoshio	1266 Matlock Ave., Honolulu
97. Okubo, Yugo	1266 Matlock Ave., Honolulu
98. Okuda, James T.	853 Coolidge St., Honolulu
99. Okumoto, Walter T.	131 Koalele St., Honolulu
100. Onaga, Mitsuru	Papaikou, Hawaii
101. Ono, Masao	180 N. King St., Honolulu
102. Ono, Morimasa	2564 Kam IV Road, Honolulu
103. Ono, Seichi	Puunene, Maui
104. Ono, Tamotsu	554 Waipa Lane, Honolulu
105. Onodera, John T.	3518 McCorriston St., Honolulu
106. Otani, Akira	2425 East Manoa Road, Honolulu
107. Oyasato, Henry C.	Box 139, Koloa, Kauai
108. Sagawa, Masaichi	Box 136, Hawi, Hawaii
109. Saito, Herbert T.	231 Magellan Ave., Honolulu
110. Sakamoto, Ronald Y.	Wahiawa, Oahu
111. Saruwatari, Kenneth K.	1214 Auld Lane, Honolulu
112. Sato, Harry N.	Lawai, Kauai
113. Serikawa, Fumio	Kahuku, Oahu
114. Shikuma, Takashi	899 Kilauea Ave., Hilo, Hawaii
115. Shintani, Thomas T.	1733 Ashford St., Honolulu

Petitioner's Exhibit M—(Continued)

Personnel—Roster of VVV Members—(Continued)

	Name.	Home Address
116.	Suzuki, Terry T.	964-B Robello Lane, Honolulu
117.	Takara, John H.	3443 Winam Avenue, Honolulu
118.	Takekawa, Claude Y.	1560 Kam IV Road, Honolulu
119.	Takemoto, Kaname	Kapaa, Kauai
120.	Takizawa, Garret T.	920 Cedar St., Honolulu
121.	Tanaka, Harry T.	1632 Aupuni St., Honolulu
122.	Terada, Herbert M.	1436-A Liliha St., Honolulu
123.	Tokuyama, George H.	153 N. Kuakini St., Honolulu
124.	Tomita, Hiroichi	Wailuku, Maui
125.	Tomita, Katsumasa	207 Ululani St., Hilo, Hawaii
126.	Tottori, Calvin A.	4429 Ahuawa Place, Honolulu
127.	Toyota, Ralph H.	1441 Liona Place, Honolulu
128.	Tsuji, Ernest Y.	1921 Kalia Road, Honolulu
129.	Tsukazaki, Norman T.	1123 1st Ave., Honolulu
130.	Tsukiyama, Ted T.	1042 17th Ave., Honolulu
131.	Uehima, Unkei	Lawai, Kauai
132.	Ueki, Wilfred O.	Box 652, Paia, Maui
133.	Urabe, Howard M.	Kapaa, Kauai
134.	Uyeda, Kenichi	711-C Middle St., Honolulu
135.	Uyeda, Kenso	557 Pokole St., Honolulu
136.	Uyehara, Harry K.	Box 289, Honokaa, Hawaii
137.	Uyemura, Richard S.	Box 2725, Honolulu
138.	Uyetake, Joso	Wailuku, Maui
139.	Watanabe, Stanley	Wailuku, Maui
140.	Watase, Edward K., Jr.	Port Allen, Kauai
141.	Yabusaki, George H.	803 Kaloa St., Honolulu
142.	Yamada, Allen H.	Box 169, Koloa, Kauai
143.	Yamada, Edward Y.	2157 Liliha St., Honolulu
144.	Yamaguchi, Tokio	Waipahu, Oahu
145.	Yamamoto, George K.	931 Robello Lane, Honolulu
146.	Yamamoto, Joji	1326-B College Walk, Honolulu
147.	Yamamoto, Richard S.	515 Malanai Place, Honolulu
148.	Yamamoto, Satoki	Honokahua, Maui
149.	Yonagi, Glenn	478 Pau Lane, Honolulu
150.	Yasuda, Joseph K.	921-A Robello Lane, Honolulu
151.	Yempuku, Ralph T.	809 Laula Way, Honolulu
152.	Yokoyama, Kaname	Hanapepe, Kauai
153.	Yoshimasu, Masato	Paia, Maui
154.	Yoshimoto, Tsugio	971-B Robello Lane, Honolulu
155.	Zakimi, Saiji	Hakalau, Hawaii
156.	Zukemura, Richard H.	39-B Holt Lane, Honolulu

Petitioner's Exhibit M—(Continued)

Personnel—Roster of VVV Members—(Continued)

FORMER MEMBERS OF THE VVV

Name	Home Address
157. Chinen, Masahide	R.F.D. Box 24, Haiku, Maui
158. Fujitani, Yoshiaki	925 Kapaakea Lane, Honolulu
159. Honma, Tsuneo	National Park, Hawaii
160. Ikeda, Tadashi	c/o Waimea High School, Waimea, Kauai
161. Kimura, Kongo	c/o Pahoa School, Pahoa, Hawaii
162. Kogami, Toshiyuki	818 Dillingham Blvd., Honolulu
163. Komoto, Iro	1722 Liliha St., Honolulu
164. Komesu, Philip	1367 Miller St., Honolulu
165. Miyasaka, George	229 Iuli St., Honolulu
166. Kagihara, Allen	1726 Anapuni St., Honolulu
167. Taketa, Morris	1483 S. King St., Honolulu
168. Takemura, Tadashi	650 Laukapu St., Hilo, Hawaii
169. Yamaoka, Noboru	Hilo, Hawaii
Capt. Richard T. F. Lum.....	212 Koalele St., Honolulu
Lieut. Tommy Kaulukukui.....	1260-A Ekaha St., Honolulu
M/S William K. Jarrett.....	3350 Maunaloa Ave., Honolulu
M/S George P. Aikau.....	27 Malunui Ave., Coconut Grove, Kailua, Oahu

PERSONALITIES

Shiro Amioka, known to his mates as Cub, he was the toughest, the sweetest and the workingest little guy in the quarry gang. Always a big hit with the girls, he was the pride and joy of Hale Laulima.

Tsugio Aoki: "Pablo" was the biggest liar of Victory Hall. His lies were so good, he believed them himself. Baby-faced and cheerful, he never shirked in his work. Working with him was always a joy.

Fred Asano, who lived on and for gambling. Living by the grace of Lady Luck, "Johnny" was in the height of ecstasy one day or in the depth of

Petitioner's Exhibit M—(Continued)

misery the next. His toothless smile was a thing of beauty.

Daniel Betsui, quiet and assuming. Never a flat note in his singing, Danny was the singinest-guy in the VVV.

Richard Chinen, the bull of the kitchen. His menacing presence in the mess hall made even the worst GI beans taste decent. A swell guy in any man's opinion.

Wallace Doi, the problem child of Varsity Hall. Wally was the constant source of Ralph Yempuku's nightmares. He tried every trick to get out of work, but always never succeeded. His hobby was cleaning barracks.

Shuichi Hashizume: Hash was never a good poker player, but he was conscientious and charitable. He got drunk on one bottle of beer and always slept early..

Takao Hedani, who wanted to be called Mike. But he wasn't the type. Hedani was always a good worker, a good eater, and a good griper.

Warren Higa: More fat than brawn, slower than an ox cart, he was aptly named, "Blubber". He had a thundering voice, full of sound and phooey. He loved to mould himself into a chair, especially at work.

Edwin Honda, always a better worker than a talker. Eddie was full of good habits. He always bought a bond, was always up early, and always got sick.

Petitioner's Exhibit M—(Continued)

Edward Iha, the unsung hero of the kitchen crew. He looked fat and sloppy but he worked hard just the same. Mike was always there to hand the boys an extra helping.

Herbert Isonaga, born and bred a gentleman. He got rough, he got drunk, but he was always a gentleman. The boys all liked him, the girls more.

Robert Kadowaki, who knew every corner and every girl at Hale Aloha. Wacky was the undisputed leader of the wolf pack that haunted Hale Aloha on Sundays. Too bad he wasn't as good a worker as a lover.

Sukeyoshi Kushi who lived with his golf clubs. Goosie golfed every afternoon but he could never keep his waistline down. He drove the boys nuts with his phonograph but they all liked him for his industriousness and cheerfulness. He never had a girl but he always talked about them.

Joseph Matsunaga; Joe was all noise and no sense. His intentions were always better than his deeds. He loafed at every opportunity and worked only on his days off. Care free and humorous, he was nice to have around.

Roy Nakamine, the sleeping beauty of Victory Hall. He slept in the morning; he slept at work. He slept at noon. And he slept at night. He just slept.

Yoshio Okubô: "Rowdy" was never happy unless he was working or talking in his sleep. He hardly spoke a word at work and did his job cheerfully. But at night he was a terror. He cussed

Petitioner's Exhibit M—(Continued)

at everybody and sang, "Johnny Doughboy" all while sleeping.

Henry Oyasato, who had the thankless job of trying to keep busy in the office. He was always popular on Pay Day. Hank loved to worry and the boys' welfare came first with him. He was never grouchy and his hair was always in place.

Mitsuru Onaga: Poor David! His body outgrew his legs. He could never live down his shortness. Even Ralph called him Shorty. But David made up for the height he lacked with voluminous talking.

Kenneth Saruwatari, 170 pounds of belly and hot air. His favorite pastimes were bragging and playing poker, but he was never good at both. Saru could work when he wanted to, but he never wanted to. He was a good truck driver while he lasted, but he didn't last long. He loved to smoke, but he never carried his own cigarettes. Wherever he went, he never forgot to be himself—noisy, mischievous, bothersome, but nice.

Harry Tanaka, who took many baths but could never get the dirt off his face. "Nigger" was a paradox. He read the best books and he drank the worst liquor. He was the best orator and he used the vilest language at work. He was the hard-working foreman and an irresponsible rowdy. He was serious one moment corny the next. "Nigger" was just plain unpredictable.

Katsumasa Tomita, the paragon of goodness. Kats had his lighter moments but he was usually serious. He took his baking seriously. He took his

Petitioner's Exhibit M—(Continued)

reading seriously. And he took his girls seriously.

Unkei Uchima: "Five by five" Unkei was a mass of gentleness. Only on the football field did he utilize his massive physique. He was always ready with a kind word or a helping hand. Popular with his men, he worked the hardest and the longest.

Joso Uyetake, the tragicomic figure of Victory Hall. He made a sad picture trying so hard to make his hair behave. Jo tried everything from vitalis to axle grease to keep his hair down. He was always plugging.

Edward Watase, whose familiar sight as he limped off to sick call, was known to everybody. Funny how he used to get sick so conveniently. His lifelong ambition was to outbluff Wally Doi at poker. He did a good job of fooling Ralph though.

Ted Tsukiyama, whose New Year's resolution was to concentrate on one girl, but never quite succeeded. His wolfing expeditions were the talk of the camp. His chores were to talk about girls, talk to girls, and to be talked to about girls.

George Yamamoto, the human encyclopedia. He was so unobtrusive that no one realized how much he knew until he came out with some incredible knowledge. George was full of appropriate repartee and made a delightful companion.

Ralph Yempuku, who never scolded, never frowned, never said no and never overslept. Ralph's hobby was to get the boys out of bed. He loved big cigars like all other little guys.

Petitioner's Exhibit M—(Continued)

SLUMMING WITH THE 3V's

"Ta-ta-ta-ta!" The clear call of the regimental bugler heralds the break of another day. At that instant the buzzer in the barracks jangles noisily that it is 6:15 AM and time to get up. Gradually the barracks come to life. Squeaking of beds, clatter of shoes and slippers, mumbling of voices and music from radios begin to be heard.

Going to the washroom, the familiar sight greets the eyes: people waiting in line—sometimes three deep—to reach the wash basins. Breakfast is served at 6:30. Really G. I. at that! Nowhere else can one taste such coffee and bacon except in the Army. Making up the bunks—the first chore of the day for each member—is undertaken. Sloppy bunks, neat bunks—all express the person's personality. As a whole the bunks are well made.

The 7:30 assembly buzzer rings. People pour out from the three barracks, respectively named Varsity Hall, Victory Hall, and Volunteers Hall. Roll call is taken and whatever announcements there are to be made are given to the whole group at this time by Captain Richard Lum or Supervisor Ralph Yempuku. Work assignments are handed out and the group disperses to the various jobs—some to Kunia, others to the 3W road project, and others to the Engineer DP.

A shrill whistle announces that it is 11:45 and time to go back for lunch. The lunch buzzer rings precisely at 12 noon. What's on the menu today?

Petitioner's Exhibit M—(Continued)

The boys are so hungry they are ready to eat anything. Pork and beans—the Army's delicacy greets their eyes. The boys fall to with vigor. For the next 15 minutes or so, the silence is unbroken except by the clatter of plates, knives, and forks. Gradually conversation is heard. Somebody tells the latest rumor he has heard. The next person questions it or adds to it. A joke—laughter. The scene is like any gathering of healthy young boys enjoying life.

A truck takes lunch out to boys working on the road. Passing a steam roller on the road one receives a hearty smile from the operator. With that vacancy in his mouth he looks just like "Jack O'Lantern" Yasuda. He is James Nishimura who recently made a trip to the regimental dentist and was scared out of his wits when the lieutenant asked the captain how to pull his tooth. Passing a gang spreading rocks on the road one goes further and sees a group of boys here and another further on laying culverts and building headwalls. The lunch wagon is always a welcome sign for these boys.

Exactly 4:30—the boys come home. Half an hour until supper is served. Showers start going full blast; wash basins are overcrowded. Mailman Yoshiharu Mikami comes around with missives for the lucky ones. Again he shouts, "Kikuji Himeda. Letter for you!"

Yum! Yum; Chicken a la king for supper. The hungry boys fall to with eagerness at the store array.

Petitioner's Exhibit M—(Continued)

great quantities for food in a short period of time. The way the food is downed gladdens the heart of any good cook.

"Orchestra Wives" starring George Montgomery, Ann Rutherford, and Glenn Miller's band is playing at the Post Theatre 4 at 5:30. After finishing supper boys with gas masks can be seen hurrying to the show.

Other boys play basketball in the inter-barracks tournament. The passing and shooting combination of Claude Takekawa and Joe Okumoto of the Volunteers Hawks draws acclaim. Other boys play golf on the neighboring golf course. The drives and putting of Sukeyoshi Kushi, 1942 Maui champion, serve as models for golf enthusiasts like Grover Nagaji and Ted Tsukiyama. Taking a peek into the bar-bell room one may see Akira Hashimoto, Akio Nishikawa, and Ranceford Matsumoto building up their muscles.

Twilight and gradually evening creeps on. Lights from unblackened out barracks go out one by one until no lights are seen after 7 PM. People crowd into the reading rooms—some to read magazines and books; others to play friendly games of poker. Quite a number of boys can be seen in Boomtown—an amusement center for the 34th Engineers—playing billiard, ping pong, and African golf. Cold drinks are served there every night.

As the short hand creeps around the clock, the squeaking of beds and finally only the soft breathing of sleepers can be heard. Another day has gone by

Petitioner's Exhibit M—(Continued)

and the VVV faces the morrow with anticipation—to do their best, come what may.

ACTIVITIES

The intent of the VVV being to produce for the winning of the war, the first concern of the group was the work that lay ahead. Starting with the building of prefabricated houses, its first major project, the group has laid by within a period of one year, the following record of achievements: Six warehouses, large and small, and a large repair shop built; several miles of barbed wire strung; tons of rock quarried; numerous cabinet shop articles such as chairs, desks, tables, lamps, blackboards, bulletin boards, mess hall articles, trophy cases, and recreational facilities produced and being produced; a road job completed, two new roads under construction; and odd jobs continually engaged in, such as barracks maintenance and general construction and repair. Under the latter head came such jobs as building a washing ramp, renovation Regimental Headquarters, the Regimental Supply Office and Officers' Quarters, building a reviewing stand and blacking out the Post Bowl. The above, though brief, represents forty-eight hours spent per week for a period of one year and constitutes the major activity of the VVV.

Foremost in popularity and participation among recreational activities was Sports. Sports in the VVV was divided into the following classes to encourage as much participation as possible by the

Petitioner's Exhibit M—(Continued)

group: Inter-Barracks competition; Intra-Regimental competition; Regimental teams and the VVV teams.

At the half-year celebration medals and trophies were awarded to VVV member for outstanding participation in sports. The Varsity Hall Tigers won the team championship. Hiroichi Tomita, Stanley Watanabe, and Seichi Ono received medals for individual competitive ability.

With the advent of the football season, the VVV organized two teams, one to enter the Citywide League 135 lb. barefoot league, and the other, unlimited in weight, to take all comers for the sheer love of the game. The two teams, both of them coached by Lt. Tommy Kaulukukui, gave a very good account of themselves, the 135 lb. team finishing with three wins against two losses, and the unlimited team breezing through its schedule undefeated. Besides winning several minor skirmishes, the unlimited team laid away a record of a 12-6 win over the Governors of Farrington High School and a 13-0 victory over the Rough Riders of Roosevelt High—both members of the Honolulu Inter-scholastic Conference. The 135 lb. team went through its 1942 season in the following manner:

Sept. 19	Diamond Packers	12	VVV.....	0
	(a pre-season game)			
Oct. 4	Waialae	6	VVV.....	7
Oct. 11	Moiliili	0	VVV.....	13
Oct. 24	Diamond Packers	13	VVV.....	0
Oct. 31	Sheridan A. C.	13	VVV.....	0
Nov. 15	Nalo O Maumau	0	VVV.....	21
Jan. 1	Chow Hounds	0	VVV.....	27
	(in the Pineapple Bowl)			

Petitioner's Exhibit M—(Continued)

Elated with the successful conclusion of a tough season which was topped by a brilliant victory over the Chow Hounds from the 47th Engineers in the opener of the New Year's doubleheader, and having been infested with spirit of competition, the VVV entered a team in the American Division of the Post Basketball League.

The VVV has thus far won five games and lost three.

Engineer Red Men.....	12	VVV.....	53
Signal Corps Hawkeyes.....	25	VVV.....	22
Engineer Volcanoes.....	18	VVV.....	43
Q. M. C. Aces.....	20	VVV.....	41
Ordnance Tarheels.....	18	VVV.....	39
Hq. Braintrusts.....	38	VVV.....	28
Brown Bombers.....	17	VVV.....	49
Infantry Wheelmen.....	29	VVV.....	27

Overshadowed by sports, but none the less fully participated in and enjoyed, were social activities such as community sing, glee club, indoor games, movies, and dances which served to acquaint members with one another.

Monthly dances for VVV members and their guests were held on Sunday afternoons in Hemenway Hall on the campus of the University of Hawaii. These were informal dances to which residents of Hale Aloha and Hale Laulima—University women's dormitories—were invited. These affairs were planned and sponsored by the members to fill a need for social activities during the week-ends.

Petitioner's Exhibit M—(Continued)

Hale Laulima, in turn, staged several Saturday night socials to which VVV members were invited.

Life in the VVV was by no means confined to athletics and social activities. The members of the VVV being predominantly from the University, intellectual activities were shown a lot of interest. Coming first on the list of such activities were the extension courses which were offered the VVV members by the University of Hawaii. Four such courses were taken and completed. They were Post-war Worlds—a course in political science; Religion and Literature; Mathematics; and Physical Education.

Required by the Army were lectures and instruction on first aid and on gas warfare. These the VVV learned with keen interest. The lectures were delivered intermittently by members of the medical staff and dealt with fractures, hemorrhage, shock, and their treatment. The description and detection of poisonous gases were taught the VVV through lectures and movie film.

Other phases of activities were model airplane construction and the maintenance of a Victory garden.

HIGHLIGHTS

Reminiscing during idle moments, VVV men will recall the many memorable experiences they have had during the past year in service. In their minds, members will experience anew their outstanding achievements. No one will find it difficult to place outstanding events in a cozy nook of his cranium to be brought out during his "pipe and chair" age.

Petitioner's Exhibit M—(Continued)

The prick of a needle will doubtlessly flash back and bring recollections of the trips made to the blood bank. Three times during the past year, the VVV's made a call at the bank, each man giving from 350 to 500 cc. of precious blood each time. Some went to escape from work for the day and the meal that came after the operation, but the great majority went because they wanted to do their bit for a worthy cause.

While not outstanding, for everybody seems to be doing it, the VVV is nevertheless, proud of its bond parade. Every month, the members of the VVV sank a sizeable sum in war bonds ranging in denominations from \$25 to \$125. As of January, 1943, the VVV showed a record of \$27,850 worth of bonds bought in a period of ten months beginning in April, 1942.

Serving on an entirely voluntary basis and without pay, Masato Doi and Tamotsu Ono acted as supervisors for the Junior Victory Brigade during a six-week period in the summer of 1942. The Brigade, composed of young boys between the ages of 12 and 15, was organized to aid in the war effort. With capable Doi and Ono at the helm, the Brigade had a successful campaign during the summer.

Harry Tanaka won the Annual Bernda Extemporaneous Speaking Contest on May 21 at the University of Hawaii speaking on the "Preservation of Free Speech." Tanaka also copped the VVV First Annual Oratorical Contest on July 16, speaking on "The Road Ahead" as being one

Petitioner's Exhibit M—(Continued)

"Drenched with blood, sweat and tears." Grover Nagaji took second place in the open division. On the same night, Hiroshi Minami convinced the judges that he was the best orator in the novice division with his talk on "Physical Fitness for Victory." Trailing him were two fellow members of the Quarry Gang, Ryoji Namba and Richard Uye-mura. The first place winners of both divisions received \$25 war bonds as their prizes.

In the literary field, Masato Doi distinguished himself when he received honorable mention in the Charles Eugene Banks Literary Contest held at the University of Hawaii. Doi's entry was a letter entitled "Frankie."

Kenichi Uyeda ran off with the grand prize in the Slogan Contest held in May, 1942, by the Morale Committee. His winning slogan was: "Work up a sweat, and the Sun will set." Stanley Kimura's "Cleanliness leads to Healthiness" won for him a prize while Walter Iwasai's "Let not our efforts be in vain" was adjudged the best for general use.

When it came to celebrating occasions, the VVV's went all-out for a good time. The first big blow-up came on August 22, 1942, after six months of hard work when everyone took time off to celebrate the half-year anniversary of the organization with a big luau staged at the University of Hawaii amphitheater. Many distinguished guests were present that day representing the Army, University of Hawaii and the community. A dance on the follow-

Petitioner's Exhibit M—(Continued)

ing day at Hemenway Hall wound up the festivities for the occasion.

Luaus seem to be the Triple V's favorite way of celebrating, for another one headlined the Christmas feast in the mess hall. Through the generosity of George Higa, proprietor of the Honolulu Cafe, delectable Hawaiian dishes were enjoyed by the members and their guests. Christmas felt like the Christmas of old that night with appropriate decorations adorning the mess hall, carols ringing out from many voices, and the spirit of giving manifested through a grab-bag.

LETTERS

I think something like this may do as a message to the VVV's on their first anniversary. It is not long, but it is heartfelt.

V.V.V.—The Most Honored Initials in Hawaii!

These initials stand for a way of meeting a serious crisis, and that way will redound to the credit of all Americans. The Varsity Victory Volunteers and their wholehearted effort represent more than a mere episode in our history; they represent the high quality of our civilization. Let the ringing words of praise by General Emmons stand for Hawaii's appreciation of these Americans.

With all good wishes,

Sincerely yours,

Signed:

GREGG M. SINCLAIR

President (U. of H.)

Petitioner's Exhibit M—(Continued)

To the Varsity Volunteers:

Much has happened since we met on the steps of Hawaii Hall and you began your service to our country as an organized unit. It was not the kind of service which you would have preferred to give, but it was service of a kind which you could give and it was needed. You have carried on through your first year with the same spirit of loyalty which was the basis for your offer to serve in whatever way the Commanding General could use your help. You have held fast to your ideals. You have made an outstanding record and have won the respect and admirations of many who were doubtful of the stand which you citizens of Japanese ancestry would take. You have fully justified the confidence of those of us who knew that you are as loyal as any other citizens of different racial descents. I am proud of what you have done.

To you all I send my congratulations and aloha!

Signed: C. R. HEMENWAY

January 23, 1943

Varsity Victory Volunteers

34th Engineers Regiment

A.F.O. 957

Gentlemen:

In the year that has passed, the VVV's have amply demonstrated their loyalty and devotion to their country and to their fellow Americans by their cheerful and enthusiastic performance of the duties entrusted to them. They are rendering a val-

Petitioner's Exhibit M--(Continued)

uable and honorable service which is all the more difficult because it lacks the glamor and excitement of combat.

Because of the sacrifices made and the high spirit maintained in the performance of their every day tasks, the VVV's have made many friends and have provided a shining example for all of us. I know they will carry on with constantly improving efficiency and the same high morale until the war is won.

Good luck VVV's!

Sincerely yours,

Signed: L. A. HICKS

January 30, 1943

To: All Members of the Varsity Victory Volunteers

Approximately a year ago I had the rare opportunity of becoming associated with you all in the capacity of being your Commanding Officer. With this assignment, came the responsibility of your conduct and behavior, performance and actions as well as the remunerations for your voluntary services. During this short span of one year, I've had daily contacts with all of you and can truly say that you have more than demonstrated your loyalty, love and devotion to your country, the United States of America.

You have met a challenge, your achievements no doubt have ultimately resulted in a very recent change in policy by the War Department towards all Americans of Japanese descent illuminating

Petitioner's Exhibit M—(Continued)

their outlook by enormous proportions. It is my great pleasure to congratulate you.

Now we have reached a point where the armed forces have a more urgent need for your voluntary services. This is essential in bringing forth a speedier victory for our United Nations.

On the occasion of the inactivation of your organization, the Varsity Victory Volunteers, after which all of you will make an important decision, it is my chief desire that you shall have a free course and full support in your embarkation. The "rudder" is in your charge—God Speed the Ship! ALOHA AND GOOD LUCK.

RICHARD T. F. LUM

Captain 34th Engineers

A.P.O. 957

After more than 11 months of service with the Army Engineers the Varsity Victory Volunteers were inactivated on January 31, 1943.

The demobilization was requested by members of the VVV who asked to be released in order that they may enlist for service in the United States Army with the American-Japanese combat unit.

In Appreciation for Their Contribution

For their written material:

Shiro Amioka

Herbert Isonaga

Grover Nagaji

Petitioner's Exhibit M—(Continued)

Shoso Kagawa
Walter Goto
Katsumasa Tomita
Ted Tsukiyama
Henry Oyasato
Wilfred Mita
Shigemitsu Nakashima
Kaname Takemoto

For the use of their snapshots:

Calvin Tottori
Clarence Hamaishi
Roy Kobayashi
Ted Tsukiyama
The Honolulu Advertiser
John Onodera
Walter Iwasa
Henry Oyasato
Katsumasa Tomita
The Hawaii Times

For typing and proofreading:

Edward Okazaki
Wilfred Mita
Allen Yamada
Shigemitsu Nakashima

For page make-up and lay-out:

Junichi Buto

For printing and publishing:

Tongg Publishing Company

YUTAKA NAKAHATA

The Editor

[Endorsed]: Filed 4-20-44.

PETITIONER'S EXHIBIT "N-1"

Nimitz In Tribute To Isle Citizens

(Following is the text of an address given by Admiral Chester W. Nimitz commander in chief of the Pacific fleet and Pacific ocean area, during ceremonies in the legislature at 10 this morning on the occasion of restoration of civil rights to Hawaii.)

It is a distinct privilege to have this opportunity of expressing to the citizens of this community, through their legislative representatives, my admiration and appreciation of their cooperation and participation with the military and naval authorities in the war effort to date.

It is true that such cooperation and acceptance of military government has not been without considerable personal inconveniences and curtailment of the normal way of life, but I am pleased to observe that such deprivations have been cheerfully met.

The selection of Gen. Emmons as the military governor was a fortunate choice.

* * *

I am sure that the harmonious relations which have existed can be attributed equally to his wise administration and to the hearty cooperation of the citizens.

I am confident that the same harmonious relations will continue under the new arrangement which becomes effective today.

During the past year this citadel in the Pacific

has been greatly strengthened, which is in keeping with its importance.

However, in spite of this defensive strengthening, and in spite of our successes against the enemy, he still has the capacity to attempt a destructive raid against our installations should he be willing to accept the risk.

For this reason it is unwise to relax our precautions, which include the blackout.

* * *

On behalf of the officers and men of the various services in this area I thank the citizens of this community for their friendly courtesy and traditional hospitality which has played an important part in the maintenance of high morale.

Star-Bulletin

[Endorsed]: Filed 4-20-44.

PETITIONER'S EXHIBIT "N-2"

Hawaii Now Safe Against
Invasion, Says Gen. Emmons

By Frank H. Bartholomew

(Note: Mr. Bartholomew is vice president and Pacific division manager of the United Press Associations, one of the world's two greatest news gathering and distributing organizations. He is in Honolulu on a mission of inspection of U. P. facilities and operations.)

[Stamped] Jan. 1, 1943

Honolulu, Jan. 1. (UP)—Hawaii, safe today under the protecting guns of one of the greatest fortresses on earth against any invasion the Japanese currently may be able to organize, is being steadily strengthened against a possible climactic battle within the next few years, Lt. Gen. Delos C. Emmons, commander of the Hawaiian department, told the United Press last night.

Gen. Emmons, 54 year old-West Virginian, is the man who in a short year's time since inheriting the wreckage of the army's air installations at Hickam, Wheeler and Bellows fields, has converted the island of Oahu into what probably is the strongest fortified point on the globe, and certainly the newest and most modern militarily.

This correspondent, permitted to tour certain of the island's new defense installations which may not be reported detailedly, observed engineering and construction feats completed or well underway on a three shift basis which border on the miraculous in ingenuity, magnitude and speed of construction.

Engineer officers said Gen. Emmons himself was the spark plug of the job in the field as well as in guarded offices where the original plans were worked out.

Gen. Emmons and his car are all over the island of Oahu. He wants to see everything himself at first hand. Each project and unit is frequently checked and improvements ordered as opportunities occur.

Progress Noted

"We are well along on new military installations," Gen. Emmons said. "Almost all the requirements of the airforce, sea coast artillery, field artillery, infantry and service of supply should be finished shortly.

"We have quite a little farther to go with housing for troops all over the island; that job now is about half done. Men currently housed in shacks and plantation buildings which we took over and in tents will be supplied with modern field housing.

"After that, we have the job of rebuilding Hawaii's public roads which our heavy-equipment is punishing severely in the present high speed construction work. We require our 18-ton dump trucks to maintain a speed of 35 miles an hour, quite a workout for roadways as well as equipment.

"Concurrently, there will be an enlargement and improvement of Honolulu's port facilities to accommodate more shipping and speed up handling of cargo."

The fortress of Oahu is, Gen. Emmons said, now able, in conjunction with the navy, to defend Hawaii against any invasion attempt the Japanese at this time are likely able to muster.

The possibility of a hit and run raid is excepted, since this sort of foray may be tried any time the enemy is willing to pay the price which would be high.

"The strategic importance of Oahu for the west coasts of North and Central America and the Panama canal is very great and both sides are well

aware of it," Gen. Emmons said. "In order to get at the mainland, the Japanese must first capture the Hawaiian islands, and in order to do that, they must first take Oahu.

"So we are building here for an eventual showdown battle with the Japanese, if in the years to come they are able to mass a force sufficient for an invasion attempt. We are building well because this island must and will be held at all costs."

Japanese Losses Noted

Commenting on the quality of enemy aviation, Gen. Emmons noted that the loss of at least 2,000 Japanese naval fliers materially reduced the efficiency of the enemy's fleet air arm; that the recent increase in flying performance of the enemy in some areas indicated he has been forced to draw from the army air corps to replace lost naval fliers and planes.

Thus far, Gen. Emmons said, the Japanese army air corps has been principally concerned with defense of Japan and Manchuria.

"Right now, the Japs seem primarily interested in building up a strong outpost line, consolidating gains throughout the Orient and Dutch Indies, and working on development and transport of oil and rubber supplies they have gained," the general said. "Fortunately, they keep coming out of their protective shell to offer us targets in the south and southwest Pacific, and each time such an invitation is extended, our navy has accepted with alacrity and splendid results.

"The navy has closed with the enemy on every

possible occasion. In continuous pressure against Jap supply lines, it is estimated that we have sunk enough shipping to seriously cramp enemy activities.

"The army, too, reaches out for a crack against the Jap whenever the opportunity offers, and past events have proven it has done so with great success."

Airfields Developed

In connection with long range bombing, current and future, he said Hawaiian airfields are being developed with an eye to still larger planes which will be delivered to the bomber command in the years to come.

"We will carry the war to Japan," Gen. Emmons concluded. "It will take time, but it will be done and in sufficient force. We are aware of our vital responsibilities to the territory and to the United States mainland on both offense and defense."

Star-Bulletin

[Endorsed]: Filed 4-20-44.

PETITIONER'S EXHIBIT "N-3"

Nimitz Sees Different Pearl Harbor Picture

By Charles McMurtry

[Stamped]: Dec. 7, 1943.

Pearl Harbor, Dec. 7. (AP)—Admiral Chester W. Nimitz, sat quietly alone in his office overlooking Pearl Harbor today, awaiting additional reports of the navy's latest strikes in the Marshall islands.

The commander in chief of the Pacific fleet appeared calm—as always—but time must have passed slowly. Carrier task forces, such as sent scores of planes raining bombs on Japanese strongly held central Pacific bases, can not break radio silence in danger zones, even to inform their admiral of their successes.

Nothing more yet has been made public than yesterday's brief communique stating only that the Marshalls were raided. That virtually is all the admiral himself knew.

But Admiral Nimitz could sit back between necessary interruptions by staff members and visualize the great force of carriers and escorting warships he had sent to bombard the Marshalls.

From his bomb-proof headquarters constructed since Pearl Harbor, he had seen most, if not all, of those ships pass within his view in recent months. Most of them also were built since Pearl Harbor and probably all of them participated in the recent raid on Marcus, Nauru, Tarawa, Wake and in the assault and capture of the Gilberts less than three weeks ago.

They were carrying out his Armistice Day declaration, "Our time has come to attack . . . The Jap has dug himself in. We must land and dig him out."

The admiral could look out over the harbor and see evidence of the navy's growing strength. Whether he could see the ships, of course, is censorable. But there were other evidences of increasing power—repair and construction facilities—

mushrooming workshops, barracks and many more, all unreportable.

Two years ago anyone looking over the harbor could see only the wreckage of warships, destroyers and other craft destroyed and damaged by the Japanese attack.

Huge clouds of black smoke from oil fires rose from the harbor. Nearby at Hickam field and John Rodgers airport wrecked planes strewed the runway. Hangars and barracks were damaged by bombs.

Other installations over the island of Oahu similarly showed evidences of the attack. Wounded overflowed hospitals, emergency wards, the armory and other buildings.

Today the picture looked bright, with the United States on the offensive.

Lt. Gen. Robert C. Richardson Jr., commanding general, central Pacific, recently warned another sneak attack is possible. Confidence prevails, however, it would be repulsed without too great damage, if it should come.—Star-Bulletin.

Nimitz Planning Blows In Pacific

[Stamped]: Jun 7 1943

Berkeley, Cal., June 7. (AP) — The Pacific fleet is being steadily reinforced and will reach formidable proportions by the end of this year, said Admiral Chester W. Nimitz, commander in chief of the Pacific fleet, who is on the mainland to confer on new offensive moves against the Japanese. Admiral Nimitz disclosed his presence on the main-

land Sunday in a surprise appearance at the University of California commencement exercises at which he was awarded an honorary LL.D. degree.

Speaking to the university alumni Admiral Nimitz explained "much as I desire to be here I couldn't have left my post unless I had a job to do. I'm happy commencement day coincided with the conference which I am called to attend—a conference which isn't particularly solicitous as to the welfare of Hirohito and which I hope will carry trouble to the Japanese."

He didn't amplify his statement.

The admiral denied supplies for the Pacific war were being neglected, announcing "by the end of the year our planes and ships in the Pacific will represent a very formidable force. We really are getting our share of war material."

Although he asserted the Japanese are on the defensive and "time is working for us now," Admiral Nimitz warned "we must do everything in our power to aid China because we must use bases in China to attack Japan. . . . We are turning out planes and ships faster than Japan can. It's simple arithmetic—subtraction for them and addition for us."

He pointed out that Japan has made no serious threat to the Pacific coast since Midway a year ago but cautioned the Japanese "are still capable of doing great damage."—*Star-Bulletin*.

[Endorsed]: Filed 4-20-44.

PETITIONER'S EXHIBIT "N-4"

New Type of U. S. Offensive Is Promised!

Nauru Won't Stay Japanese Long, Says Halsey
Staff Chief

By Frank Tremaine

Headquarters, South Pacific Force, Jan. 27. (U.P.)—Rabaul and Kavieng, with their estimated 100,000 men—next Japanese bases on the United States' list in the south Pacific—will be eliminated with something new from Admiral William F. Halsey's bag of offensive tricks, Rear Admiral Robert B. Carney, south Pacific chief of staff, indicated today.

Admiral Carney also hinted that the Japanese will not be permitted to occupy Nauru island for long. Nauru is the enemy's only useable base between the south Pacific and central Pacific areas.

Aggressive, energetic Admiral Carney, whose balding head belies his youthfulness, pointed out that Bougainville and Buka are already useless to the Japanese and that United States planes and carriers have proved they can hit the enemy at Rabaul "any damn time we want."

"The next two obvious points of Japanese strength are Rabaul and Kavieng," Admiral Carney said.

* * *

"It is perfectly evident to everyone that the south Pacific and southwest Pacific forces are pushing along toward eliminating those bases. They are next on the list.

"We plan to put them out of business.

"But just how we will do it will be something the enemy least expects. It won't be in accordance with any familiar pattern."

Admiral Carney said that aerial observation of Rabaul and Kavieng indicates that the Japanese already have lost all confidence in their ability to use them for anything of great value.

* * *

"He knows his number is up," the admiral said. "We have proved we can hit him exactly when and where we want. By coordinating our forces, air and sea, we will blockade New Britain and New Ireland forces—which may total 100,000 men.—Star-Bulletin, 1-27-44

[Endorsed]: Filed 4-20-44.

PETITIONER'S EXHIBIT "N-5"

100,000 Japs Face Annihilation In New South Pacific Moves

By Frank Tremaine

(United Press Staff Correspondent)

South Pacific Headquarters, Jan. 18—New tactics from Admiral William F. Halsey, bag of tricks will be used to "eliminate" Rabaul in New Britain and Kavieng in New Ireland and with them 100,000 Japs, Rear Admiral Robert Carney, South Pacific chief of staff, predicted tonight.

Carney pointed out that Bougainville and Buka already are useless to the Japs, and said offensives

against Rabaul and Kavieng—"the next Jap base on the U. S. list"—would put them "out of business, but just how we'll do it will be something the enemy least expects. It won't be in accordance with any familiar pattern."

Japs Know Number Is Up

Carney said air observation of Rabaul and Kavieng indicates the Japs already have lost all confidence in their ability to use them for anything of great value.

"The Jap knows his number is up," Carney said. "We've proved we can hit him exactly when and where we want. By coordinating our forces in the air and at sea, we will blockade New Britain and New Ireland and their forces, which may run above 100,000 men."

Carney also indicated Nauru may soon be wrested from the Japanese. Referring to the South Pacific and Central Pacific offensives, which spread an arc from the Gilberts to the Solomons, Carney said:

"The Jap still holds Nauru, and it is illogical to expect us to permit him to occupy this salient much longer."—Advertiser 1-19-44

[Endorsed]: Filed 4-20-44.

PETITIONER'S EXHIBIT "N-6"

U.S. Casualties In Invasion Of Marshalls
Held Moderate

By Sandor S. Klein

(United Press Staff Correspondent)

Washington, Feb. 3—American forces in the Marshall Islands are meeting heavy resistance, but the casualties thus far have been moderate, Undersecretary of War Robert Patterson said today.

"Fighting is continuing," Patterson told a press conference.

"Our troops are making excellent progress. Preliminary reports show fine coordination between land, sea and air forces—which is the outstanding characteristic of our amphibious operations."

Positions Secure

Patterson said that the position of marine forces on Roi and Namur islands now appeared to be secure while the 7th Army division was proceeding with the occupation of Kwajalein.

"Occupation of the Marshalls will widen the crack in Japan's outer defense ring," he said.

"When it is completed it will shorten the line of supply and communications with the Southwest and South Pacific and make it possible for us to deploy our forces so they can attack the inner defenses of enemy territory.

"The crack in the outer defense wall may become the breach through which we can advance to the Philippines or Tokyo."

Patterson said that invasion details were still awaited in Washington.

Fleet Not Challenged

He noted that the Japanese had not yet challenged the U. S. fleet, although they had plenty of opportunity to do so.

He pointed out that in attacking Kwajalein atoll United States forces bypassed Wotje, Maloelap, Mille and Jaluit just as Kiska was bypassed when Attu was occupied.

"As we advance in the Pacific we will secure our western defenses," he said. "These islands will provide a defense barrier 2,000 miles to the west of the former outer defense of Hawaii."—Advertiser 2-4-44

[Endorsed]: Filed 4-20-44.

PETITIONER'S EXHIBIT "O"

Honolulu, T. H.

10 April 1944

Memorandum to Colonel Wm. R. C. Morrison

Subject: Information requested by Court and Opposing Counsel relative to Japanese.

1. Actual Number of American Citizens of Japanese Ancestry Now in the United States Army Who Were Inducted or Volunteered in the Territory of Hawaii.

Lt. Col. Henry Best, Deputy Director of Selective

Service, advised that there were now 5,226 citizens of Japanese ancestry serving in the United States Army who were inducted or volunteered during the period commencing December, 1940 and extending up to the present date.

2. Actual Number of Casualties in American Citizens of Japanese Ancestry Serving With American Forces Who Were Inducted or Volunteered From the Territory of Hawaii.

Selective Service officials and Military Intelligence officials state that although several of the AJAs have been killed in action in Italy, the exact number is not available at the present time in the Territory of Hawaii.

3. Total Number of Japanese Evacuated from the Territory of Hawaii from December 7, 1941 to the Present Date.

1,747. (This figure can be broken down to show AJAs, Aliens and families of these two groups).

4. Total Number of Japanese Interned in the Territory of Hawaii from December 7, 1941 to the Present Date.

1,396. (This figure can be broken down as to Japanese Aliens and citizens of Japanese ancestry, if desired).

5. Total Number of Japanese Interned During the First Quarter of 1944.

96. Total number interned during March, 1944—
41. (These figures can be broken down as to Aliens and American citizens of Japanese ancestry, if desired.)

6. Total Number of Internee Cases, That Is the Total Number of Japanese of All Classes Which Have Been Considered for Custodial Detention, Investigated or Otherwise Handled by the Military Intelligence Agencies in This Area.

50,000.

7. Were Citizens of Japanese Ancestry Who Volunteered Recently for Military Service Asked Question of Whether They Were Dual Citizens?

Lt. Col. Henry Best, Deputy Director of Selective Service states that all of the volunteers in this group executed Form 304-A Revised which included, among other questions, the following:

"25. To the best of your knowledge, was your birth ever registered with any Japanese governmental agency for the purpose of establishing a claim to Japanese citizenship?.....

"(a) If so registered, have you applied for cancellation of such registration? (Expatriation) Yes or No.
When? Where?

(Col. Best also advised that no statistics were kept relative to the number of volunteers that were dual citizens and to obtain this information it will be necessary to pull all of the individual files located in the several local boards throughout the Territory.)

8. Ascertain Full Facts Relative to Actual Work Assigned to Petitioner Lloyd C. Duncan Subsequent to His Incarceration in the City and County Jail.

Lieut. Jules Sachson, 810th M.P. Company, Immigration Station, Honolulu, T.H., stated that he was in charge of the prisoners that were sent to the 810th M.P. Company from the City and County Jail. That they were assigned work under his supervision. He stated that Lloyd C. Duncan first appeared on the Company's records on March 3, 1944 and was assigned to work in the Supply Room; that he worked in the Supply Room from the 3d of March through the 13th of March; that the Company's records did not show that Duncan was working at the 810th M.P. Company on the 14th of March. He stated, however, that on this day he had sent 4 other Provost Court prisoners to Kaneohe to work on a cesspool project which had been previously commenced by the Army.

He stated that on the 15th of March Duncan was sent to Kaneohe along with a work detail and that his sergeant advised him that Duncan refused to go into the hole and work and was given other work near that project. That Duncan returned to Kaneohe on the 17th and 18th of March 1944. That Duncan worked around the 810th P.M. Company on Sunday, March 19, and that on Monday, March 20, he was not sent down by the City and County Jail officials for work.

Further that Duncan worked on the 21st, 22nd, 23rd, and 24th around the 810th M.P. Company at the Immigration Station. That on the 25th of March 1944, he was sent back to Kaneohe; that on the 26th of March he worked at the 810th M.P. Company, Immigration Station, Honolulu. That

on March 27th and 28th he worked at Kaneohe on the cesspool project, and on the 29th and 30th Duncan worked at the Halekai Officers' Club at Waikiki.

That his records did not show that Duncan worked under his supervision any time subsequent to March 30, 1944.

Lieut. Sachson stated that he did not know the petitioner in this case and certainly did not know he had filed application for a Writ of Habeas Corpus; further, that Duncan was assigned along with other prisoners to the work that had to be done and was not discriminated against in any manner. Lt. Sachson stated that when the prisoners come down from the City and County Jail, that he is not advised whether or not they will do hard labor or light work; that his only instructions were to put them to work.

9. The Number of Japanese Employed on Military Reservations, Installations and Military and Naval Projects, Territory of Hawaii, Including Used Employees, Etc.

Army projects—total number of employees 27,497

American citizens of Japanese ancestry . . . 6,778

Aliens of Japanese ancestry . . . 743

(These figures may be slightly off, but they are the best estimate that could be obtained on such short notice)

Navy projects—Byrne Construction Company (Handles construction for United States Navy outside of Pearl Harbor proper)

Total number of employees.....2,000
Amer. citizens of Japanese ancestry..... 585
Aliens of Japanese ancestry..... none

ANGUS M. TAYLOR, JR.

1st Lieut., CAC,

[Endorsed]: Filed 4-20-44.

PETITIONER'S EXHIBIT "P"

SUMMARY OF PERSONS ARRESTED AND CONVICTED IN THE PROVOST COURT
CITY & COUNTY OF HONOLULU—CALENDAR YEAR 1942

Compiled by the Bureau of Crime Statistics & Identification

Territory of Hawaii

Subject	Total	January	February	March	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Number of Persons arrested.....	22,480	2413	280	200	3217	2776	2501	3295	2801	1252	1472	1454	819
Type of Offenses:													
General Order Viol.....	11,886	1057	114	125	1496	1249	1214	1787	1305	700	1174	1156	509
Terr. Law ".....	7,615	736	98	61	1052	1054	1034	1227	1257	476	220	204	196
County Ord'n'ee. ".....	2,703	617	66	13	620	441	218	234	213	58	55	79	89
Federal Violation.....	276	3	2	1	49	32	35	47	26	18	23	15	25
Total.....	22,480	2413	280	200	3217	2776	2501	3295	2801	1252	1472	1454	819
Dispositions:													
Jail.....	124	91	1	0	7	5	7	5	4	4	0	0	0
Prison.....	719	10	12	1	37	54	81	108	186	74	85	33	38
Institutions.....	26	18	0	0	1	2	1	0	3	0	1	0	0
Fined.....	16,898	1767	226	183	2632	2112	1862	2489	2185	1101	842	817	682
Bail Forfeitures.....	1,439	53	11	1	35	44	27	96	34	40	510	586	2
Suspended:													
Fine.....	1,871	117	8	7	259	293	390	445	309	10	8	7	18
Suspended Sentence.....	388	50	8	0	131	170	15	14	0	0	2	0	0
Suspended—Jail.....	87	81	1	0	1	0	0	0	2	0	2	0	0
Suspended—Prison.....	557	18	2	4	97	71	67	120	62	17	18	11	70
Dismissed.....	359	198	13	4	17	25	51	18	16	6	4	0	7
Other Disposition.....	12	10	0	0	0	0	0	0	0	0	0	0	2
Total.....	22,480	2413	280	200	3217	2776	2501	3295	2801	1252	1472	1454	819
Fines Collect. & Imposed.....	\$532,539.50	21,906.50	38,903.00	92,631.00	64,246.	61,592.	40,881.	48,366.	49,037.	38,607.	28,750.	26,842.	21,138.00
Bail Forfeit. Collect.....	13,927.00	412.00	215.00	270.00	620.	705.	495.	2,160.	1,215.	475.	2,980.	4,380.	10.00
Total.....	\$546,476.50	22,318.50	39,118.00	92,901.00	64,866.	62,297.	41,376.	50,526.	50,252.	39,082.	31,730.	30,862.	21,148.00

Petitioner's Exhibit "P"—(Continued)

PERSONS ARRESTED AND CONVICTED IN THE
PROVOST COURT

CITY & COUNTY OF HONOLULU

for the Month of January, 1942

Number of Persons Arrested 2,413

Type of Offenses:

General Order Violations.....	1,057
Terr. Law	736
County Ord'n.	617
Federal	3

Dispositions 2,413

Jail	91
Prison	10
Institutions	18

Fine	1,767
Bail Forfeitures	53

Suspended:

Fine	117
Suspended Sentence	50
Jail	81
Prison	18
Dismissed	198
Other Disposition	10

Total Fines Collected \$22,318.50

Fines	\$21,906.50
Bail Forfeitures	412.00

Petitioner's Exhibit "P"—(Continued)

PERSONS ARRESTED AND CONVICTED IN THE
PROVOST COURT

CITY & COUNTY OF HONOLULU

for the Month of February, 1942

Number of Persons Arrested 280

Type of Offenses:

General Order Violations.....	114
Terr. Law ".....	98
County Ord'n. ".....	66
Federal ".....	2

Dispositions 280

Jail	1
Prison	12
Institutions	0
Fine	226
Bail Forfeitures	11

Suspended:

Fine	8
Suspended Sentence	6
Jail	1
Prison	2
Dismissed	13
Other Disposition	0

Total Fines Collected & Imposed.....\$39,118.00

Fines Imposed\$38,903.00

Bail Forfeitures 215.00

Petitioner's Exhibit "P"—(Continued)

PERSONS ARRESTED AND CONVICTED IN THE
PROVOST COURT

CITY & COUNTY OF HONOLULU

for the Month of March, 1942

Number of Persons Arrested 200

Type of Offenses:

General Order Violations.....	125
Terr. Law ".....	61
County Ord'n. ".....	13
Federal ".....	1

Dispositions 200

Jail	0
Prison	1
Institutions	0
Fine	183
Bail Forfeitures	1

Suspended:

Fine	7
Suspended Sentence	0
Jail	0
Prison	4
Dismissed	4
Other Disposition	0

Total Fines Collected & Imposed.....\$92,901.00

Fines Imposed\$92,631.00

Bail Forfeitures 270.00

Petitioner's Exhibit "P"—(Continued)

PERSONS ARRESTED AND CONVICTED IN THE
PROVOST COURT

CITY & COUNTY OF HONOLULU

for the Month of April, 1942

Number of Persons Arrested 3,217

Type of Offenses:

General Order Violations.....	1,496
Terr. Law ".....	1,052
County Ord'n. ".....	620
Federal ".....	49

Dispositions 3,217

Jail	7
Prison	37
Institutions	1

Fine	2,632
Bail Forfeitures	35

Suspended:

Fine	259
Suspended Sentence	131
Jail	1
Prison	97
Dismissed	17
Other Disposition	0

Total Fines Collected & Imposed.....\$64,866.00

Fines Imposed	\$64,246.00
Vail Forfeitures	620.00

Petitioner's Exhibit "P"—(Continued)

PERSONS ARRESTED AND CONVICTED IN THE
PROVOST COURT

CITY & COUNTY OF HONOLULU

for the Month of May, 1942

Number of Persons Arrested 2,776

Type of Offenses:

General Order Violations.....	1,249
Terr. Law ".....	1,054
County Ord'n. ".....	441
Federal ".....	32
	<u> </u>

Dispositions 2,776

Jail	5
Prison	54
Institutions	2

Fine	2,112
Bail Forfeitures	44

Suspended:

Fine	293
Suspended Sentence	170
Jail	0
Prison	71
Dismissed	25
Other Disposition	0
	<u> </u>

Total Fines Collected & Imposed \$62,297.00

Fines Imposed \$61,592.00

Vail Forfeitures 705.00

Petitioner's Exhibit "P"—(Continued)

PERSONS ARRESTED AND CONVICTED IN THE
PROVOST COURT

CITY & COUNTY OF HONOLULU

for the Month of June, 1942

Number of Persons Arrested 2,501

Type of Offenses:

General Order Violations.....	1,214
Terr. Law ".....	1,034
County Ord'n. ".....	218
Federal ".....	35

Disposition 2,501

Jail	7
Prison	81
Institutions	1

Fine	1,862
Bail Forfeitures	27

Suspended:

Fine	390
Suspended Sentence	15
Jail	0
Prison	67
Dismissed	51
Other Disposition	0

Total Fines Collected & Imposed.....\$41,376.00

Fines Imposed	\$40,881.00
Vail Forfeitures	495.00

Petitioner's Exhibit "P"—(Continued)

PERSONS ARRESTED AND CONVICTED IN THE
PROVOST COURT

CITY & COUNTY OF HONOLULU

for the Month of July, 1942

Number of Persons Arrested 3,295

Type of Offenses:

General Order Violations.....	1,787
Terr. Law ".....	1,227
County Ord'n. ".....	234
Federal ".....	47

Dispositions 3,295

Jail	5
Prison	108
Institutions	0

Fine	2,489
Bail Forfeitures	96

Suspended:

Fine	445
Suspended Sentence	14
Jail	0
Prison	120
Dismissed	18
Other Disposition	0

Total Fines Collected & Imposed \$50,526.00

Fines Imposed \$48,366.00

Vail Forfeitures 2,160.00

Petitioner's Exhibit "P"—(Continued)

PERSONS ARRESTED AND CONVICTED IN THE
PROVOST COURT

CITY & COUNTY OF HONOLULU

for the Month of August, 1942

Number of Persons Arrested 2,801

Type of Offenses:

General Order Violations.....	1,305
Terr. Law ".....	1,257
County Ord'n. ".....	213
Federal ".....	26

Dispositions 2,801

Jail	4
Prison	186
Institutions	3

Fine	2,185
Bail Forfeitures	34

Suspended:

Fine	309
Suspended Sentence	0
Jail	2
Prison	62
Dismissed	16
Other Disposition	0

Total Fines Collected & Imposed.....\$50,252.00

Fines Imposed\$49,037.00

Vail Forfeitures 1,215.00

Petitioner's Exhibit "P"—(Continued)

PERSONS ARRESTED AND CONVICTED IN THE
PROVOST COURT

CITY & COUNTY OF HONOLULU

for the Month of September, 1942

Number of Persons Arrested 1,252

Type of Offenses:

General Order Violations.....	700
Terr. Law	476
County Ord'n.	58
Federal	18

Dispositions 1,252

Jail	4
Prison	74
Institutions	0
Fine	1,101
Bail Forfeitures	40

Suspended:

Fine	10
Suspended Sentence	0
Jail	0
Prison	17
Dismissed	6
Other Disposition	0

Total Fines Collected & Imposed.....\$39,082.00

Fines Imposed	\$38,607
Vail Forfeitures	475

Petitioner's Exhibit "P"—(Continued)

PERSONS ARRESTED AND CONVICTED IN THE
PROVOST COURT

CITY & COUNTY OF HONOLULU

for the Month of October, 1942

Number of Persons Arrested 1,472

Type of Offenses:

General Order Violations.....	1,174
Terr. Law ".....	220
County Ord'n. ".....	55
Federal ".....	23
	<u>1,472</u>

Dispositions 1,472

Jail	0
Prison	85
Institutions	1
Fine	842
Bail Forfeitures	510

Suspended:

Fine	8
Suspended Sentence	2
Jail	2
Prison	18
Dismissed	4
Other Disposition	0
	<u>32</u>

Total Fines Collected & Imposed.....\$31,730.00

Fines Imposed\$28,750.00

Vail Forfeitures 2,980.00

Petitioner's Exhibit "P" (Continued)

PERSONS ARRESTED AND CONVICTED IN THE
PROVOST COURT

CITY & COUNTY OF HONOLULU

for the Month of November 1942

Number of Persons Arrested 1,454

Type of Offenses:

General Order Violations.....	1,156
Terr. Law ".....	204
County Ord'n. ".....	79
Federal ".....	15

Dispositions 1,454

Jail	0
Prison	33
Institutions	0

Fine 817

Bail Forfeitures 586

Suspended:

Fine 7

Suspended Sentence 0

Jail 0

Prison 11

Dismissed

Other Disposition

Total Fines Collected & Imposed.....\$30,862

Fines Imposed\$26,482

Vail Forfeitures 4,380

Petitioner's Exhibit "P"--(Continued)

PERSONS ARRESTED AND CONVICTED IN THE
PROVOST COURT

CITY & COUNTY OF HONOLULU

for the Month of December, 1942

Number of Persons Arrested 819

Type of Offenses:

General Order Violations.....	509
Terr. Law	196
County Ord'n.	89
Federal	25

Dispositions 819

Jail	0
Prison	38
Institutions	0

Fine	682
Bail Forfeitures	2

Suspended:

Fine	18
Suspended Sentence	0
Jail	0
Prison	70
Dismissed	7
Other Disposition	2

Total Fines Collected & Imposed.....\$21,148.00

Fines Imposed	\$21,138.00
Vail Forfeitures	10.00

[Endorsed]: Filed 4-20-44.

PETITIONER'S EXHIBIT "Q"

LIST OF PROVOST COURT PRISONERS PRESENTLY INCARCERATED

Name	Offense	Date of Confinement	Sentence	Release
1. Hanlon, Thomas J.....	Burglary 1st	6/ 9/42	2 1/2 Yrs.	10/ 9/44
2. Mitchell, Robert E.	Burglary 1st	2/12/43	5 Yrs. (To be paroled upon de- parture from Terr. after serving 18 months)	
3. Tam, Henry	Burglary 1st	7/20/42	2 1/2 Yrs.	7/20/44 (Parole)
4. Broad, Edwin	Burglary 1st	8/ 1/42	4 Yrs.	9/ 1/45
5. Sousa, Joaquin	Burglary 1st	2/11/42	3 Yrs.	1/17/45
6. Smith, Curtis	Burglary 1st	2/12/43	5 Yrs. (To be paroled upon de- parture from Terr. after serving 18 months)	
7. Hiona, William	Burglary 1st	5/23/42	3 Yrs.	9/11/44
8. Fernandez, Nelson	Burglary 1st	4/28/42	2 Yrs.	4/ 7/44
9. Peleiholani, Levi	Burglary 1st	8/31/42	4 Yrs.	9/31/45
10. Opunui, David	Burglary 2nd	4/ 6/42	4 Yrs.	5/ 6/45
11. Malani, George K.	Burglary 2nd	7/31/42	4 Yrs.	8/31/45
12. Senido, Raymond T.	Burglary 2nd	4/24/42	3 Yrs.	1/23/45

Harry E. White

List of Provost Court Prisoners Presently Incarcerated—(Continued)

Name	Offense	Date of Confinement	Sentence	Release
13. O'Campe, William	Burglary 2nd	8/21/42	3 Yrs.	12/ 9/44
14. Kapowai, Joseph	Burglary 2d. 1	10/ 9/42	2 Yrs.	5/15/44
15. Mizumoto, Daniel M.	Gross Cheat	8/ 2/42	3 Yrs.	9/22/44
16. Grisson, Roy E.	Gross Cheat	8/11/42	2 Yrs.	7/17/44
17. White, Harry E.	Embezzlement	8/25/42	4 Yrs.	9/25/45
18. Spurlock, Fred	Assault & Battery	3/28/42	2 1/2 Yrs.	9/27/44
19. Tadiya, Angel	Assault & Battery	12/10/42	1 1/2 Yrs.	6/ 9/44
20. Lubrica, Antonio	Assault & Battery	6/30/42	3 Yrs.	10/18/44
21. Ramil, Valentine	Assault & Battery	2/25/42	4 Yrs.	6/15/44
22. Damacio, Thomas Q.	Sex Under 16	4/20/42	3 Yrs.	8/ 8/44
23. Palian, Quadiancio	Sex Under 16	4/17/42	3 Yrs.	8/ 5/44
24. Roplo, Catalino	Sex Under 16	5/27/42	3 Yrs.	9/15/44
25. Feliciano, Manuel	Sex Under 16	3/ 5/42	3 Yrs.	6/23/44
26. Aganon, Pedro	Sex Under 16	9/ 5/42	3 Yrs.	12/23/44
27. Kealoha, Peter	Sex Under 12	4/ 9/42	4 Yrs.	5/ 9/45
28. Trinidad, Monica	Sex Under 12	7/ 3/42	5 Yrs.	3/ 9/46
29. Tomas, Alfredo P.	Sex Under 12	6/20/42	4 Yrs.	7/20/45
30. Sales, Hervacio	Sex Under 12	3/17/42	4 Yrs.	4/17/45
31. Abinoha, Marcelo	Indecent Assault	5/ 4/42	4 Yrs.	6/ 4/45
32. Eslao, Pedro	Indecent Assault	4/18/42	4 Yrs.	5/18/45
33. Andras, Pedro	Indecent Assault	12/30/41	4 Yrs.	1/30/45

List of Provost Court Prisoners Presently Incarcerated—(Continued)

Name	Offense	Date of Confinement	Sentence	Release
34. Joseph, James	Indecent Assault	5/28/42	3 Yrs.	5/30/44
35. Militante, John S.	Incest	8/21/42	3 Yrs.	12/ 9/44
36. Figuerro, Albert	Incest	8/29/42	3½ Yrs.	5/ 4/45
37. Juario, Hermojenes	Incest	5/27/42	3 Yrs.	9/15/44
38. Torres, Acrillo	Incest	5/23/42	3½ Yrs.	1/29/45
39. De Los Santos, William.....	Common nuisance, offen- sively armed, obstruct- ing police officer.	7/14/42	3 Yrs.	11/ 3/44
40. Gomes, Joseph	Manslaughter	4/29/42	4 Yrs.	5/29/45
41. Ishika, Ushihiro	Sale of Narcotics	1/17/42	5 Yrs.	9/23/45
42. Matsumoto, Kinjiro	Possession of Contraband	12/24/41	5 Yrs.	8/30/45
43. Maxwell, Joseph J.....	Obstructing war effort and malicious injury	9/29/43	3 Yrs.	1/17/46
44. Mori, Max Itsujo	Forgery	4/25/42	4 Yrs.	5/23/45
45. Muranaka, Minoru	Disloyalty to U. S., drunk in a public place, inter- ference with police of- ficer, disorderly person.	8/15/42	5 Yrs.	4/21/46
46. Nakashima, Matsoshi	Possession of Contraband	10/ 3/42	2 Yrs.	5/11/44
47. Okimura, Rev. Kakjo	Illegal transmission of mail.	6/ 9/42	5 Yrs.	2/13/46

Harry E. White

List of Provost Court Prisoners Presently Incarcerated—(Continued)

Name	Offense	Date of Confinement	Sentence	Release
48. Ono, Clarence S.....	Possession of Contra- band, enemy alien, curfew.	12/31/42	2 Yrs.	8/ 8/44
49. Sugai, Yoshinji	Rape, sex under 12, sex under 16.	5/25/42	8 Yrs.	4/ 7/48
50. Aceso, Manuel	Murder	7/10/42	15 Yrs.	7/10/54
51. Brown, Saffrey	Murder	4/ 5/42	30 Yrs.	4/ 5/62
52. Marciel, Joseph	Robbery	7/ 8/42	7 Yrs.	9/ 6/47
53. Malaqui, Laborio	Manslaughter	7/ 4/42	5 Yrs.	4/ 4/46

PROVOST COURT PRISONERS TRANSFERRED TO THE TERRITORY

Name	Offense	Date of Confinement	Sentence
1. Nakamura, James	Burglary 1st	2/11/42	5 Yrs.
2. Estrella, Henry Martin.....	Burglary 1st, escape inmate, and malicious conversion.	3/11/42	5 Yrs.
3. Chong, Kam Kit	Burglary 1st, escape inmate, and malicious conversion.	3/11/42	5 Yrs.
4. Palehine, John	Burglary 1st, escape inmate, and malicious conversion.	3/11/42	5 Yrs.
5. Rhodé, Clarence	Burglary 1st, escape inmate, and malicious conversion.	3/11/42	5 Yrs.

[Endorsed]: Filed 4-20-44.

RESPONDENT'S EXHIBIT No. 1

Honolulu Advertiser, Apr. 6/44

Emmons Says Jap Attack On Coast Possible

San Francisco, April 5 (UP)—In a letter to the 9th regional office of civilian defense, Gen. Emmons said that under the existing military situation in the Pacific the enemy "has the following capabilities and it is possible an attack on Pacific coast targets may be made in any of the following manners or combinations thereof:

"1. Sabotage of vital industries, communications and public utilities.

"2. Submarine attacks by shelling vital coastal installations.

"3. Limited air attack on the Pacific coast by carrier-based planes, with possible targets in vital production and congested areas.

"4. Nuisance bombing and incendiary attacks by submarine-based planes on forested and congested areas.

"5. Commando raids by landing parties in vital areas."

[Endorsed]: Filed 4-20-44.

RESPONDENT'S EXHIBIT No. 2-1

United States (Cut) of America

War Department

Washington, March 31, 1944

I Hereby Certify that the attached copies of documents relating to governmental functions in the Territory of Hawaii, are true and exact photostatic copies made from official records on file in the office of the Assistant Secretary of War, War Department, Washington, D. C.

HARRISON A. GERHARDT

Harrison A. Gerhardt

Lt. Colonel, General Staff
Corps - Executive to Asst.
Secretary of War

I Hereby Certify that Lt. Colonel Harrison A. Gerhardt, General Staff Corps, who signed the foregoing certificate, is the Executive to the Assistant Secretary of War, and that to his certification as such full faith and credit are and ought to be given.

In Testimony Whereof I, Henry L. Stimson, Secretary of War, have hereunto caused the seal of the War Department to be affixed and my name to be subscribed by the Assistant Chief Clerk of the said

Respondent's Exhibit No. 2-1—(Continued)
Department, at the City of Washington, this 31 day
of March, 1934

[Seal]

HENRY L. STIMSON

Secretary of War.

By J. C. COOK

Assistant Chief Clerk.

War Department

Form No. 7

Agreed Draft

[In longhand]: File Copy
War Dept.

Dear Mr. President:

We are pleased to report that after lengthy discussions the Departments of War, Justice, and Interior have reached an operating agreement upon the distribution of governmental functions between the civil and the military authorities in the Territory of Hawaii.

Pursuant to this agreement the Governor of Hawaii and the Commanding General will issue simultaneous proclamations. Their effect is to leave unchanged the state of martial law and the suspension of the writ of habeas corpus, to restore to the civil government the majority of civil functions hitherto exercised by the military authorities, and to provide emergency powers for the military government. Copies of the proclamations are enclosed for your information.

We also enclose a draft of a letter which we suggest you might appropriately send to the Secretary of War. It is designed, as you will observe, to reassure the civilian Departments that there will

Respondent's Exhibit No. 2-1—(Continued)
be no unnecessary resumption of the restored functions by the military authorities.

Sincerely yours,

HENRY L. STIMSON

Secretary of War

Attorney General

Secretary of the Interior

Approved

WARNER W. GARDNER
INGRAM M. STAINBACK
W. FORTAS
[Illegible]
J. McCLOY

The President
-The White House.

[In longhand]: Copy of entire set sent to C&R,
OSW 1-22-43

[Typewritten in righthand margin]: X—President of the U. S. ASW 370.8 Hawaii

Agreed Draft

1/18/43

[In longhand]: of letter from the President to the Secretary of War

[In longhand]: File Copy
War Dept.

My dear Mr. Secretary:

I have examined the proposed proclamation to be issued by the Commanding General, Hawaiian Department, and the proposed proclamation to be is-

Respondent's Exhibit No. 2-1—(Continued)
sued concurrently by the Governor of Hawaii. I understand that the Departments of War, Justice, and Interior have agreed in this manner to resolve the difficult questions surrounding the administration of government in the Territory of Hawaii.

I wish to congratulate all the Departments concerned in their cooperative and successful efforts to reach an amicable solution of the knotty problems involved. In an area of such strategic importance as the Hawaiian Islands in a time of active war in the Pacific, I can readily appreciate the difficulty in defining exactly the boundaries between civil and military functions. I think the formula which this proclamation applies meets the present needs.

I know that General Emmons will do all that he can, consistent with his military responsibility, to refrain from exercising his authority over what are normally civil functions. I am confident that the military and civil authorities will cooperate fully. If an occasion should arise on which, after consultation with the civil authorities, the Commanding General felt it necessary to take action under the provisions of paragraph 3, I should like to be informed of the circumstances under which such action was taken. I hope also that there will be a

Respondent's Exhibit No. 2-1—(Continued)
further restoration of civil authority as and when
the situation permits.

Sincerely yours,

Approved

WARNER GARDNER
INGRAM M. STAINBACK
W. FORTAS
J. McCLOY
[Illegible]

Hon. Henry L. Stimson,
Secretary of War.

Proclamation
U. S. Army

Headquarters, Hawaiian Department.
Honolulu, 1943.

To the People of Hawaii:

I, Delos C. Emmons, Lieutenant General, United
States Army, as Commanding General, Hawaiian
Department, and as Military Governor of Hawaii,
do hereby proclaim:

1. Full jurisdiction and authority are hereby
relinquished by the Commanding General to the
Governor and other officers of the Territory of
Hawaii, to the courts of that territory, to the city
and county of Honolulu, to other counties, to all
other officers of the territory or other persons act-
ing under its authority, to the United States Dis-
trict Court for Hawaii, and to the appropriate of-
ficers of the United States, to exercise such powers
as may now or hereafter be vested in them respec-

Respondent's Exhibit No. 2-1—(Continued)
tively by law over the following matters and others necessarily related thereto:

- (a) Control of prices
- (b) Rationing of commodities among the civilian population
- (c) Control of hospitals, medical personnel, and medical supplies
- (d) Food production by and distribution of food among the civilian population
- (e) Control of rents
- (f) Control of transportation and traffic by land, except the movement of troops, military supplies and equipment, and except that the Commanding General may prescribe rules for the traffic during blackout hours
- (g) Public health, sanitation, and prevention of disease among civilians
- (h) Licensing of businesses, regulation of hours of business, and types of forbidden occupations
- (i) Judicial proceedings, both criminal and civil, except:

(1) Criminal prosecutions against members of the armed forces. Members of auxiliary armed forces shall be included within the term "armed forces" after induction into the service and also before induction in respect of any act or omission certified by the Commanding General to be in the line of duty.

(2) Civil suits against members of the armed forces, as defined in subparagraph (1), in respect of any act or omission certified by the Commanding General to be in the line of duty.

Respondent's Exhibit No. 2-1—(Continued)

(3) Criminal prosecutions for violations of military orders.

The Commanding General may waive the above exception with respect to any particular prosecution or suit, or any class of prosecutions or suits, thereby permitting such prosecutions or suits, to be tried in the appropriate court of the territory or in the United States District Court for Hawaii, as the case may be.

(j) Control of imports for civilian consumption and exports by civilians within allotments of tonnage made by the Commanding General —

(k) Censorship of mail from civilians in the territory

(l) Control of liquor and narcotics

(m) Schools and children

(n) The custody of alien property

(o) Collection and disposition of garbage, ashes, and other waste

(p) Banking, currency, and securities, provided that the Commanding General may prescribe the measures to be taken to prevent the enemy from obtaining securities or money or realizing upon them if he should obtain them

(q) Civilian defense activities, except that the Commanding General shall have jurisdiction to prescribe the duties of the Civilian Defense Corps, and to regulate and inspect their training

(r) Control of the supply, employment, hours, wages, and working conditions of labor, except as to (1) employees of the United States under the War Department or the Navy Department, (2) workers

Respondent's Exhibit No. 2-1—(Continued)
employed on construction and other projects under the War Department or the Navy Department, (3) stevedores and other workers employed on docks and dock facilities, and (4) employees of public utilities. It is contemplated that the Commanding General and the Governor of Hawaii by mutual agreement will appoint a joint advisory committee, which shall from time to time consult and advise with each of them with reference to labor matters in their respective fields.

2. The Commanding General, Hawaiian Department, is charged with responsibility for the defense of the Hawaiian Islands and for their preparation for use as a base for offensive operations. For such purposes he shall continue, so far as he deems the military security of the territory to require, to exercise full jurisdiction over all matters over which he now has jurisdiction except such as are transferred to civil authorities pursuant to paragraph 1 of this proclamation.

3. Whenever the Commanding General, in the light of an existing military emergency or in anticipation of any military emergency, considers it necessary for the security of the islands or their use as a military or naval base, he shall have power, upon a written declaration of the existence or the anticipation of a military emergency, to resume such of the functions and jurisdictions as are hereby or may hereafter be transferred to the civil authorities, or to issue such additional military orders, after consultation with the Governor of the terri-

tory where civilian rights and the administration of the civilian government are affected, directing such action as in the judgment of the Commanding General may be required for the military security of the territory.

4. Neither this proclamation nor the revocation of orders announced in paragraph 5 hereof shall operate to invalidate any conviction, or any appli-

Respondent's Exhibit No. 2-1—(Continued)
cation of military orders to persons or activities, or any other action, which occurred prior to the effective date of this proclamation or such revocation.

5. This proclamation shall take effect thirty days after its date. Those parts of all military orders affecting the subjects enumerated in paragraph 1 hereof are hereby revoked effective thirty days after the date hereof.

DELOS C. EMMONS,

Lieutenant General, U. S.

Army, Commanding

Military Governor of Hawaii.

Approved:

WARNER W. GARDNER

INGRAM M. STAINBACK

J. McCLOY

[Two signatures illegible]

By the Governor of Hawaii

A PROCLAMATION

Whereas, the Governor of Hawaii by his proclamation of December 7, 1941, placed the Territory of Hawaii under martial law, in exercise of his

Respondent's Exhibit No. 2-1—(Continued)

powers under section 67 of the Organic Act, which action was confirmed by the President of the United States on December 8, 1941; and

Whereas, a state of martial law remains in effect and the privilege of the writ of habeas corpus remains suspended;

Now, Therefore, I, Ingram M. Stainback, Governor of Hawaii, under the authority given by section 67 of the Organic Act, do hereby proclaim:

1. The Governor of Hawaii and the other civilian officers and agencies of the federal, the territorial and the local governments, will resume on the thirtieth day hereafter their respective jurisdictions, functions and powers, according to law, with respect to the following matters, and others necessarily related thereto:

- (a) Control of prices
- (b) Rationing of commodities among the civilian population
- (c) Control of hospitals, medical personnel, and medical supplies
- (d) Food production by and distribution of food among the civilian population
- (e) Control of rents
- (f) Control of transportation and traffic by land, except the movement of troops, military supplies and equipment, and except that the Commanding General may prescribe rules for the traffic during blackout hours
- (g) Public health, sanitation, and prevention of disease among civilians

Respondent's Exhibit No. 2-1—(Continued)

(h) Licensing of businesses, regulation of hours of business, and types of forbidden occupations

(i) Judicial proceedings, both criminal and civil, except:

(1) Criminal prosecutions against members of the armed forces. Members of auxiliary armed forces shall be included within the term "armed forces" after induction into the service and also before induction in respect of any act or omission certified by the Commanding General to be in the line of duty.

(2) Civil suits against members of the armed forces, as defined in subparagraph (1), in respect of any act or omission certified by the Commanding General to be in the line of duty.

(3) Criminal prosecutions for violations of military orders.

The Commanding General may waive the above exception with respect to any particular prosecution or suit, or any class of prosecutions or suits, thereby permitting such prosecutions or suits to be tried in the appropriate court of the Territory or in the United States District Court for Hawaii, as the case may be.

(j) Control of imports for civilian consumption and exports by civilians within allotments of tonnage made by the Commanding General

(k) Censorship of mail from civilians in the Territory

(l) Control of liquor and narcotics

Respondent's Exhibit No. 2-1—(Continued)

(an) Schools and children

(n) The custody of alien property

(o) Collection and disposition of garbage, ashes, and other waste

(p) Banking, currency, and securities, provided that the Commanding General may prescribe the measures to be taken to prevent the enemy from obtaining securities or money or realizing upon them if he should obtain them

(q) Civilian defense activities, except that the Commanding General shall have jurisdiction to prescribe the duties of the Civilian Defense Corps, and to regulate and inspect their training

(r) Control of the supply, employment, hours, wages, and working conditions of labor, except as to (1) employees of the United States under the War Department or the Navy Department, (2) workers employed on construction and other projects under the War Department or the Navy Department, (3) stevedores and other workers employed on docks and dock facilities, and (4) employees of public utilities. It is contemplated that the Commanding General and the Governor of Hawaii by mutual agreement will appoint a joint advisory committee which shall from time to time consult and advise with each of them with reference to labor matters in their respective fields.

2. For the purposes of the defense of the Hawaiian Islands and for their preparation for use as a base for offensive operations, the Commanding General shall continue so far as he deems

Respondent's Exhibit No. 2-1—(Continued)
the military security of the Territory to require, to exercise full jurisdiction over all matters over which he now has jurisdiction except such as are resumed by civil authorities pursuant to paragraph 1 of this proclamation.

3. Whenever the Commanding General, in the light of an existing military emergency or in anticipation of any military emergency, considers it necessary for the security of the islands or their use as a military or naval base, he shall have power, upon a written declaration of the existence or the anticipation of a military emergency, to exercise such of the functions and jurisdictions as are hereby or may hereafter be resumed by the civil authorities, or to issue such additional military orders, after consultation with the Governor of the Territory where civilian rights and the administration of the civilian government are affected, directing such action as in the judgement of the Commanding General may be required for the military security of the Territory.

4. Nothing in this proclamation shall operate to invalidate any conviction, or any application of military orders to persons or activities, or any other action, which occurred or shall occur prior to the thirtieth day hereafter.

5. I call upon all good citizens of the United States and all other persons within the Territory of Hawaii to obey promptly and fully, in letter and spirit, such orders as the Commanding General may issue under this proclamation and during the continuance of the state of martial law.

Respondent's Exhibit No. 2-1—(Continued)—
Done at Honolulu, Territory of Hawaii, this
day of January, 1943.

INGRAM M. STAINBACK,
Governor of Hawaii.

Approved

WARNER W. GARDNER
INGRAM M. STAINBACK
W. FORTAS
J. McCLOY
[Illegible]

[Endorsed]: Filed 4-20-44.

RESPONDENT'S EXHIBIT No. 2-2

I hereby certify that the attached are true photo-
static copies of letters and accompanying papers
on file in the White House Office.

C. E. INGLING,
Chief of Files,
The White House Office.

I hereby certify that C. E. Ingling, who signed the
foregoing certificate, is Chief of Files in the White
House Office.

M. C. LATTA
M. C. Latta
Executive Clerk,
The White House Office.

Respondent's Exhibit No. 2-2—(Continued)

The White House

Washington

[Marginal notes]: (400) Hawaii F x161

[Stamped] Feb 1 1943

My dear Mr. Secretary:

I have examined the proposed proclamation to be issued by the Commanding General Hawaiian Department, and the proposed proclamation to be issued concurrently by the Governor of Hawaii. I understand that the Departments of War, Justice, and Interior have agreed in this manner to resolve the difficult questions surrounding the administration of government in the Territory of Hawaii.

I wish to congratulate all the Departments concerned in their cooperative and successful efforts to reach an amicable solution of the knotty problems involved. In an area of such strategic importance as the Hawaiian Islands in a time of active war in the Pacific, I can readily appreciate the difficulty in defining exactly the boundaries between civil and military functions. I think the formula which this proclamation applies meets the present needs.

X

I know that General Emmons will do all that he can, consistent with his military responsibility, to refrain from exercising his authority over what are normally civil functions. I am confident that the military and civil authorities will cooperate fully. If an occasion should arise on which, after consultation with the civil authorities, the Commanding

Respondent's Exhibit No. 2-2--(Continued)

General felt it necessary to take action under the provisions of paragraph 3, I should like to be informed of the circumstances under which such action was taken. I hope also that there will be a further restoration of civil authority as and when the situation permits.

Sincerely yours,

FRANKLIN D. ROOSEVELT

Hon. Henry L. Stimson, x25

Secretary of War.

[In manuscript]: Copy sent to Interior & Justice
Copy for White House Files

January 18, 1943.

Dear Mr. President:

We are pleased to report that after lengthy discussions the Departments of War, Justice, and Interior have reached an operating agreement upon the distribution of governmental functions between the civil and the military authorities in the Territory of Hawaii.

Pursuant to this agreement the Governor of Hawaii and the Commanding General will issue simultaneous proclamations. Their effect is to leave unchanged the state of martial law and the suspension of the writ of habeas corpus, to restore to the civil government the majority of civil functions hitherto exercised by the military authorities, and to provide emergency powers for the military government. Copies of the proclamations are enclosed for your information.

Respondent's Exhibit No. 2-2—(Continued)

We also enclose a draft of a letter which we suggest you might appropriately send to the Secretary of War. It is designed, as you will observe, to reassure the civilian Departments that there will be no unnecessary resumption of the restored functions by the military authorities.

Very sincerely yours,

HENRY L. STIMSON

Secretary of War

FRANCIS BIDDLE

Attorney General x10

HAROLD L. ICKES

Secretary of the Interior x6

The President,
The White House.

Proclamation

U. S. Army

Headquarters, Hawaiian Department.

Honolulu,, 1943.

To the People of Hawaii:

I, Delos C. Emmons, Lieutenant General, United States Army, as Commanding General, Hawaiian Department, and as Military Governor of Hawaii, do hereby proclaim:

1. Full jurisdiction and authority are hereby relinquished by the Commanding General to the Governor and other officers of the Territory of Hawaii, to the courts of that territory, to the city and county of Honolulu, to other counties, to all other officers of the territory or other persons acting under its

Respondent's Exhibit No. 2-2—(Continued)
authority, to the United States District Court for Hawaii, and to the appropriate officers of the United States, to exercise such powers as may now or hereafter be vested in them respectively by law over the following matters and others necessarily related thereto:

- (a) Control of prices
- (b) Rationing of commodities among the civilian population
- (c) Control of hospitals, medical personnel, and medical supplies
- (d) Food production by and distribution of food among the civilian population
- (e) Control of rents
- (f) Control of transportation and traffic by land, except the movement of troops, military supplies and equipment, and except that the Commanding General may prescribe rules for the traffic during blackout hours
- (g) Public health, sanitation, and prevention of disease among civilians
- (h) Licensing of businesses, regulation of hours of business, and types of forbidden occupations
- (i) Judicial proceedings, both criminal and civil, except:
 - (1) Criminal prosecutions against members of the armed forces. Members of auxiliary armed forces shall be included within the term "armed forces" after induction into the service and also before induction in respect of any act

Respondent's Exhibit No. 2-2—(Continued)
or omission certified by the Commanding General to be in the line of duty.

(2) Civil suits against members of the armed forces, as defined in subparagraph (1), in respect of any act or omission certified by the Commanding General to be in the line of duty.

(3) Criminal prosecutions for violations of military orders.

The Commanding General may waive the above exception with respect to any particular prosecution or suit, or any class of prosecutions or suits, thereby permitting such prosecutions or suits to be tried in the appropriate court of the territory or in the United States District Court for Hawaii, as the case may be.

(j) Control of imports for civilian consumption and exports by civilians within allotments of tonnage made by the Commanding General

(k) Censorship of mail from civilians in the territory

(l) Control of liquor and narcotics

(m) Schools and children

(n) The custody of alien property

(o) Collection and disposition of garbage, ashes, and other waste

(p) Banking, currency, and securities, provided that the Commanding General may prescribe the measures to be taken to prevent the enemy from obtaining securities or money or realizing upon them if he should obtain them.

Respondent's Exhibit No. 2-2—(Continued)

(q) Civilian defense activities, except that the Commanding General shall have jurisdiction to prescribe the duties of the Civilian Defense Corps, and to regulate and inspect their training

(r) Control of the supply, employment, hours, wages, and working conditions of labor, except as to (1) employees of the United States under the War Department or the Navy Department, (2) workers employed on construction and other projects under the War Department or the Navy Department, (3) stevedores and other workers employed on docks and dock facilities, and (4) employees of public utilities. It is contemplated that the Commanding General and the Governor of Hawaii by mutual agreement will appoint a joint advisory committee, which shall from time to time consult and advise with each of them with reference to labor matters in their respective fields.

2. The Commanding General, Hawaiian Department, is charged with responsibility for the defense of the Hawaiian Islands and for their preparation for use as a base for offensive operations. For such purposes he shall continue, so far as he deems the military security of the territory to require, to exercise full jurisdiction over all matters over which he now has jurisdiction except such as are transferred to civil authorities pursuant to paragraph 1 of this proclamation.

3. Whenever the Commanding General, in the light of an existing military emergency or in anticipation of any military emergency, considers it nec-

Respondent's Exhibit No. 2-2—(Continued)

nessary for the security of the islands or their use as a military or naval base, he shall have power, upon a written declaration of the existence or the anticipation of a military emergency, to resume such of the functions and jurisdictions as are hereby or may hereafter be transferred to the civil authorities, or to issue such additional military orders, after consultation with the Governor of the territory where civilian rights and the administration of the civilian government are affected, directing such action as in the judgment of the Commanding General may be required for the military security of the territory.

4. Neither this proclamation nor the revocation of orders announced in paragraph 5 hereof shall operate to invalidate any conviction, or any application of military orders to persons or activities, or any other action, which occurred prior to the effective date of this proclamation or such revocation.

5. This proclamation shall take effect thirty days after its date. Those parts of all military orders affecting the subjects enumerated in paragraph 1 hereof are hereby revoked effective thirty days after the date hereof.

DELOS C. EMMONS,

Lieutenant General, U. S.

Army, Commanding.

Military Governor of Hawaii.

Respondent's Exhibit No. 2-2—(Continued)

By the Governor of Hawaii

A Proclamation

Whereas, the Governor of Hawaii by his proclamation of December 7, 1941, placed the Territory of Hawaii under martial law, in exercise of his powers under section 67 of the Organic Act, which action was confirmed by the President of the United States on December 8, 1941; and

Whereas, a state of martial law remains in effect and the privilege of the writ of habeas corpus remains suspended;

Now, Therefore, I, Ingram M. Stainback, Governor of Hawaii, under the authority given by section 67 of the Organic Act, do hereby proclaim:

1. The Governor of Hawaii and the other civilian officers and agencies of the federal, the territorial and the local governments, will resume on the thirtieth day hereafter their respective jurisdictions, functions and powers, according to law, with respect to the following matters, and others necessarily related thereto:

- (a) Control of prices
- (b) Rationing of commodities among the civilian population
- (c) Control of hospitals, medical personnel, and medical supplies
- (d) Food production by and distribution of food among the civilian population
- (e) Control of rents
- (f) Control of transportation and traffic by land, except the movement of troops, military supplies

Respondent's Exhibit No. 2-2—(Continued)
and equipment, and except that the Commanding General may prescribe rules for the traffic during blackout hours.

(g) Public health, sanitation, and prevention of disease among civilians

(h) Licensing of businesses, regulation of hours of business, and types of forbidden occupations

(i) Judicial proceedings, both criminal and civil, except:

(1) Criminal prosecutions against members of the armed forces. Members of auxiliary armed forces shall be included within the term "armed forces" after induction into the service and also before induction in respect of any act or omission certified by the Commanding General to be in the line of duty.

(2) Civil suits against members of the armed forces, as defined in subparagraph (1), in respect of any act or omission certified by the Commanding General to be in the line of duty.

(3) Criminal prosecutions for violations of military orders.

The Commanding General may waive the above exception with respect to any particular prosecution or suit, or any class of prosecutions or suits, thereby permitting such prosecutions or suits to be tried in the appropriate court of the Territory or in the United States District Court for Hawaii, as the case may be.

Respondent's Exhibit No. 2-2—(Continued)

(j) Control of imports for civilian consumption and exports by civilians within allotments of tonnage made by the Commanding General

(k) Censorship of mail from civilians in the Territory

(l) Control of liquor and narcotics

(m) Schools and children

(n) ~~The~~ custody of alien property

(o) Collection and disposition of garbage, ashes, and other waste

(p) Banking, currency, and securities, provided that the Commanding General may prescribe the measures to be taken to prevent the enemy from obtaining securities or money or realizing upon them if he should obtain them

(q) Civilian defense activities, except that the Commanding General shall have jurisdiction to prescribe the duties of the Civilian Defense Corps, and to regulate and inspect their training

(r) Control of the supply, employment, hours, wages, and working conditions of labor, except as to (1) employees of the United States under the War Department or the Navy Department, (2) workers employed on construction and other projects under the War Department or the Navy Department, (3) stevedores and other workers employed on docks and dock facilities, and (4) employees of public utilities. It is contemplated that the Commanding General and the Governor of Hawaii by mutual agreement will appoint a joint advisory committee

Respondent's Exhibit No. 2-2—(Continued)

which shall from time to time consult and advise with each of them with reference to labor matters in their respective fields.

2. For the purposes of the defense of the Hawaiian Islands and for their preparation for use as a base for offensive operations, the Commanding General shall continue so far as he deems the military security of the Territory to require, to exercise full jurisdiction over all matters over which he now has jurisdiction except such as are resumed by civil authorities pursuant to paragraph 1 of this proclamation.

3. Whenever the Commanding General, in the light of an existing military emergency or in anticipation of any military emergency, considers it necessary for the security of the islands or their use as a military or naval base, he shall have power, upon a written declaration of the existence or the anticipation of a military emergency, to exercise such of the functions and jurisdictions as are hereby or may hereafter be resumed by the civil authorities, or to issue such additional military orders, after consultation with the Governor of the Territory where civilian rights and the administration of the civilian government are affected, directing such action as in the judgment of the Commanding General may be required for the military security of the Territory.

4. Nothing in this proclamation shall operate to invalidate any conviction, or any application of military orders to persons or activities, or any other

Respondent's Exhibit No. 2-2—(Continued)
action, which occurred or shall occur prior to the
thirtieth day hereafter.

5. I call upon all good citizens of the United
States and all other persons within the Territory
of Hawaii to obey promptly and fully, in letter and
spirit, such orders as the Commanding General may
issue under this proclamation and during the con-
tinuance of the state of martial law.

Done at Honolulu, Territory of Hawaii, this . . .
day of January, 1943.

INGRAM M. STAINBACK,
Governor of Hawaii.

[Endorsed]: Filed 4-20-44.

RESPONDENT'S EXHIBIT No. 2-3

United States (ent) of America
War Department

Washington, 22 March 19344

I hereby certify that the attached copy of letter
from the President, addressed to the Secretary of
War, dated February 1, 1943, is a true and exact
photostat copy made from an official record on file
in this office.

H. A. GERHARDT

Harrison A. Gerhardt

Lt. Colonel, General Staff
Corps, Executive to Ass't
Secretary of War

I hereby certify that Lt. Colonel Harrison A. Gerhardt, who signed the foregoing certificate, is the Executive Officer to the Assistant Secretary of War, and that to his certification as such full faith and credit are and ought to be given.

In testimony whereof, I, Henry L. Stimson, Secretary of War, have hereunto caused the seal of the War Department to be affixed and my name to be subscribed by the Assistant Chief Clerk of the said Department, at the City of Washington, this 22 day of March, ~~193~~ 1944.

[Seal] HENRY L. STIMSON,

Secretary of War.

By J. C. COOK,

Assistant Chief Clerk.

War Department

Form No. 7

[Stamped]: Received War Department Sec-
retary's Office 1943 Feb 2 AM 11:22

The White House
Washington

February 1, 1943

My dear Mr. Secretary:

I have examined the proposed proclamation to be issued by the Commanding General, Hawaiian Department, and the proposed proclamation to be issued concurrently by the Governor at Hawaii. I understand that the Departments of War, Justice, and Interior have agreed in this manner to resolve the difficult questions surrounding the administration of government in the Territory of Hawaii.

I wish to congratulate all the Departments concerned in their cooperative and successful efforts to reach an amicable solution of the knotty problems involved. In an area of such strategic importance as the Hawaiian Islands in a time of active war in the Pacific, I can readily appreciate the difficulty in defining exactly the boundaries between civil and military functions. I think the formula which this proclamation applies meets the present needs.

I know that General Emmons will do all that he can, consistent with his military responsibility, to refrain from exercising his authority over what are normally civil functions. I am confident that the military and civil authorities will cooperate fully. If an occasion should arise on which, after consultation with the civil authorities, the Commanding General felt it necessary to take action under the provisions of paragraph 3, I should like to be informed of the circumstances under which such action was taken. I hope also that there will be a further restoration of civil authority as and when the situation permits.

Sincerely yours,

FRANKLIN D. ROOSEVELT

Hon. Henry L. Stimson,
Secretary of War.

[Endorsed]: Filed 4-20-44.

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RESPONDENT'S EXHIBIT No. 2-4

United States [Cut] of America

War Department

Washington, 31 March 193 1944

I Hereby Certify that the attached copy of letter dated 1/18/43, relative to proclamations pertaining to governmental affairs in the Territory of Hawaii, is a true and exact photostatic copy made from an official record on file in the office of the Assistant Secretary of War, War Department, Washington, D.C.

HARRISON A. GERHARDT

Harrison A. Gerhardt

Lt. Colonel, General Staff
CorpsExecutive to Asst. Secretary
of War

I Hereby Certify that Lt. Colonel Harrison A. Gerhardt, General Staff Corps, who signed the foregoing certificate, is the Executive to Assistant Secretary of War, and that to his certification as such full faith and credit are and ought to be given.

In Testimony Whereof, I, Henry L. Stimson, Secretary of War, have hereunto caused the seal of the War Department to be affixed and my name to be subscribed by the Assistant Chief Clerk of

the said Department, at the City of Washington,
this thirty-first day of March, ~~193~~ 1944.

[Seal] HENRY L. STIMSON
Secretary of War.

By J. C. COOK
Assistant Chief Clerk.

War Department
Form No. 7

[Penciled in margin]: File Copy. W 370.8
Hawaii X. Emmons 1-18-43

Agreed Draft

My dear General Emmons:

As you have doubtless been informed by the Secretary of War, an agreement has been reached in Washington which calls for the simultaneous issuance of similar proclamations by you and by me. I understand that you have received from the Secretary of War both the proclamation which you are to issue and a copy of that which I am to issue. I suggest that we confer at your earliest convenience as to the date and the manner of issuance of these proclamations.

I undertook when in Washington to add by informal letter a particularization of my intentions as to several of the general provisions of the proclamations. These matters are:

1. Although, by paragraph 1(g) of the proclamations, control of "public health, sanitation, and prevention of disease among civilians" is restored to the civil government, I shall put into effect any

measure which you determine to be necessary to prevent contamination by the enemy.

2. Paragraph 1(b) of the proclamations restores to the civil government control of "rationing commodities among the civilian population." In the administration of these functions, the civil authorities will respect any determination which you might make as to necessary reserves of food-stuffs, both as to amount and as to kind, which are to be held against an emergency.

Sincerely yours,

Governor of Hawaii.

Approved

WARNER W. GARDNER
INGRAM M. STAINBACK
W. FORTAS
J. McCLOY
[Illegible]

[Endorsed]: Filed 4-20-44.

RESPONDENT'S EXHIBIT No. 3

SUMMARY OF CASES IN PROVOST COURT FOR THE MONTH OF FEBRUARY 1944

Nature of Cases	Number
GO 8, 2.05 Fraudulent entrance in military area.....	1
GO 7, 9.01 Smoking aboard ship	2
GO 8, 9.01 Failure to report military service.....	1
GO 7, 8.05 Parking in res. waterfront area.....	1
GO 2, 3.03 Contempt of Court	8
GO 9, 13.01 Filing cable w/o approval	1
GO 9, 14.02 Making false statements	1

Nature of Cases			Number	
GO 3, 4.05	Blackout speeding	.....	186	27
GO 3, 4.06	Blackout parking	.....	276	45
GO 3, 2.01	Blackout-lights	.....	62	90
GO 3, 4.02	Blackout—pedestrian	.....	111	82
GO 3, 4.04	Blackout—vehicle	.....	38	53
GO 10, 6.02	Absenteeism	.....	51	84
1258 RO	Speeding	.....	11	86
6280 RL as am	Headless & Careless	.....	11	56
2/234/SL '37)	Driving w/o Lic: Not having on person, etc.	.....	12	M
14/234/SL '37)				
1313 RO	Unlawful manipulation of levers	.....	1	34
1214 RO	Going thru red light	.....	5	72
1240 RO	Following too closely	.....	11	64
1276 RO	Right of way to ped.	.....	1	26
1239 RO	Driving left of center line	.....	1	13
1238 RO	Illegal overtaking	.....	2	28
1325 RO	Failure to make hand signal	.....	1	21
1544 RO	Disregarding stop sign	.....	1	6
1213 RO	Failing to obey signal	.....	2	
1245 RO	No right of way	.....	5	
1261 RO	Drunk Driving	.....	2	
1304 RO	Defective brakes	.....	1	
1233 RO	Driving on wrong side of road	.....	2	
1236 RO	Overtaking another vehicle	.....	1	
1250 RO	Unlawful backing	.....	1	
1243 RO	Illegal left turn	.....	1	
1241 RO	Turning at intersection	.....	1	
1246 RO	Failure to yield right of way	.....	5	
1284 RO	Failure to remain at scene of accident	.....	2	
Total			819	

RECAPITULATION

1. Convictions	.....	819
2. Dismissals	.....	79
3. Blackout Forfeitures	.....	519
4. Traffic Forfeitures	.....	36
Total Cases	.....	1453

Additional Information

1. Suspensions	182
2. Alien Cases	21
3. Philippine Nationals	55

[Endorsed]: Filed 4-20-44.

RESPONDENT'S EXHIBIT No. 4

BOARD OF HEALTH
TERRITORY OF HAWAIIPOPULATION ESTIMATES AS OF JULY 1, 1943
AND JULY 1, 1944

Area	July 1, 1943	Jan. 1, 1944	July 1, 1944
City of Honolulu	211,847	214,769	217,692
City & County of Honolulu (Exclusive of Honolulu City)	119,724	122,069	124,414
City of Hilo	24,158	24,531	24,904
County of Hawaii (Exclu- sive of Hilo City)	42,904	42,198	41,491
County of Kalawao	450	447	444
County of Kauai	32,791	32,619	32,448
County of Maui	51,489	51,237	50,986
Territory	483,363	487,870	492,379
Race	July 1, 1943	Jan. 1, 1944	July 1, 1944
Hawaiian	12,617	12,210	11,802
Part Hawaiian	56,932	58,055	59,179
Puerto Rican	8,775	8,854	8,932
Caucasian	155,664	159,172	162,684
Chinese	29,621	29,717	29,813
Japanese	162,690	163,478	164,268
Korean	6,941	6,956	6,970
Filipino	49,261	48,563	47,863
All Others	862	865	868
Territory	483,363	487,870	492,379

Compiled by Bureau of Vital Statistics.
October 28, 1943

Respondent's Exhibit No. 4—(Continued)

U. S. DEPARTMENT OF COMMERCE

Bureau of the Census

Washington

March 10, 1941

Sixteenth Census of the

Hawaii: Population

United States: 1940

RACIAL COMPOSITION OF THE

POPULATION OF HAWAII

The Hawaiians, part-Hawaiians, and Caucasians, in Hawaii, taken as a single group, increased much more rapidly than the Japanese inhabitants of the Territory during the past decade, and now outnumber the latter element of the population, according to a preliminary report compiled from returns of the Sixteenth Decennial Census, released today by Acting Director Vergil D. Reed of the Bureau of the Census, Department of Commerce.

The Hawaiians and part-Hawaiians increased 26.4 percent, from 50,860 in 1930 to 64,310 in 1940; the Caucasians, 40.8 percent, from 73,702 to 103,791; and the Japanese, 13.1 percent, from 139,631 to 157,903. Thus the Hawaiians and part-Hawaiians increased twice as rapidly, and the Caucasians three times as rapidly, as the Japanese. The Filipino population of Hawaii, which numbered 63,052 in 1930, declined 16.6 percent to 52,569 in 1940.

This report presents comparative figures, for the last three Census years, for the several racial groups which constitute the population of Hawaii. It supplements the report entitled "Summary of Preliminary Population Figures for the Territory of Hawaii: 1940," issued September 3, 1940. All figures in the table below are final.

Respondent's Exhibit No. 4—(Continued)

POPULATION OF HAWAII, BY RACE: 1940, 1930 AND 1920

Race	1940	1930	1920	Percent of total			Percent of change	
				1940	1930	1920	1930-1940	1920-1930
Total	423,330	368,336	255,912	100.0	100.0	100.0	14.9	43.9
Hawaiian and part-Hawaiian.....	64,310	50,860	41,750	15.2	13.8	16.3	26.4	21.8
Caucasian	103,791	73,702	49,140	24.5	20.0	19.2	40.8	50.0
Chinese	28,774	27,179	23,507	6.8	7.4	9.2	5.9	15.6
Filipino	52,569	63,052	21,031	12.4	17.1	8.2	16.6	199.8
Japanese	157,905	139,631	109,274	37.3	37.9	42.7	13.1	27.8
Korean	6,851	6,461	4,950	1.6	1.8	1.9	6.0	30.5
Puerto Rican	8,296	6,671	5,602	2.0	1.8	2.2	24.4	19.1
Other	834	780	658	.2	.2	.3	6.9	18.5

[In pencil] : 11037

Respondent's Exhibit No. 4—(Continued)

POPULATION, BY AGE, FOR THE TERRITORY OF HAWAII: CENSUS, 1940

Age	Territory of Hawaii		Oahu		Hawaii		Kauai		Niihau		Maui	
	Total	%	Total	%	Total	%	Total	%	Total	%	Total	%
All Ages	423,330	100.00	257,664	100.00	73,276	100.00	35,636	100.00	182	100.00	46,919	100.00
Under 5 Years	40,085	9.47	22,937	8.90	7,418	10.12	3,414	9.58	42	23.08	5,255	11.20
5 - 9 Years	43,431	10.26	24,571	9.54	8,343	11.39	3,806	10.68	34	18.68	5,721	12.19
10 - 13 Years	38,132	9.01	21,596	8.38	7,404	10.11	3,325	9.33	14	7.69	5,038	10.74
14 Years	9,363	2.21	5,199	2.02	1,870	2.55	837	2.35	4	2.20	1,244	2.65
15 - 19 Years	48,336	11.42	29,738	11.54	8,323	11.36	3,893	10.92	19	10.44	5,554	11.84
20 - 24 Years	51,075	12.06	36,837	14.30	6,128	8.36	2,949	8.28	11	6.04	4,252	9.06
25 - 29 Years	42,332	10.00	27,236	10.57	6,410	8.75	3,667	10.29	11	6.04	3,861	8.23
30 - 34 Years	33,388	7.89	20,163	7.83	5,664	7.73	3,253	9.13	15	8.24	3,322	7.08
35 - 44 Years	51,000	12.04	30,752	11.93	8,639	11.79	4,734	13.28	17	9.34	5,345	11.39
45 - 54 Years	32,603	7.70	19,463	7.55	5,973	8.15	2,783	7.81	6	3.30	3,603	7.68
55 - 64 Years	20,517	4.85	11,952	4.64	4,139	5.65	1,735	4.84	4	2.20	2,270	4.84
65 - 74 Years	10,107	2.39	5,553	2.15	2,348	3.20	954	2.68	3	1.65	1,107	2.36
75 Years & Over	2,961	0.70	1,667	0.65	617	0.84	286	0.80	2	1.10	347	0.74

	Lanai		Kahoolawe		Molokai		Honolulu City*		Rural Oahu		Outlying Islands		Palmyra	
	Total	%	Total	%	Total	%	Total	%	Total	%	Total	%	Total	%
All Ages	3,720	100.00	1	100.00	5,340	100.00	179,326	100.00	78,338	100.00	560	100.00	32	100.00
Under 5 Years	379	10.19	—	—	639	11.97	16,947	9.45	5,990	7.65	1	0.18	—	—
5 - 9 Years	360	9.68	—	—	596	11.16	17,919	9.99	6,652	8.49	—	—	—	—
10 - 13 Years	266	7.15	—	—	489	9.16	15,808	8.82	5,788	7.39	—	—	—	—
14 Years	72	1.94	—	—	137	2.57	3,828	2.13	1,371	1.75	—	—	—	—
15 - 19 Years	333	8.95	—	—	463	8.67	20,293	11.32	9,445	12.06	13	2.32	—	—
20 - 24 Years	335	9.00	—	—	406	7.60	21,342	11.90	15,495	19.78	150	26.79	7	21.87
25 - 29 Years	485	13.04	—	—	525	9.83	18,165	10.13	9,071	11.58	127	22.68	10	31.25
30 - 34 Years	435	11.69	—	—	441	8.26	14,069	7.85	6,094	7.78	90	16.07	5	15.63
35 - 44 Years	605	16.26	—	—	786	14.72	21,951	12.24	8,801	11.23	115	20.54	7	21.87
45 - 54 Years	226	6.08	—	—	493	9.23	14,210	7.92	5,253	6.70	53	9.46	3	9.38
55 - 64 Years	181	4.87	1	100.00	224	4.19	9,077	5.06	2,875	3.67	11	1.96	—	—
65 - 74 Years	37	0.99	—	—	105	1.97	4,353	2.43	1,200	1.53	—	—	—	—
75 Years & Over	6	0.16	—	—	36	0.67	1,364	0.76	303	0.39	—	—	—	—

* Palmyra Island not included in Honolulu City population figures.

* The outlying islands (Baker, Canton, Enderbury, Howland, Jarvis, Johnston, and Midway), although not under the jurisdiction of the Territory of Hawaii, are for census purposes included in the totals for the Territory and for Honolulu County.

POPULATION, BY RACE, FOR THE TERRITORY OF HAWAII, CENSUS, 1940

Race	Territory of Hawaii		Oahu		Ii waii		Kauai		Niihau*		Maui	
	Total	%	Total	%	Total	%	Total	%	Total	%	Total	%
All Races	423,330	100.00	257,664	100.00	73,27	100.00	35,636	100.00	182	100.00	46,919	100.00
Hawaiian	14,375	3.40	7,064	2.74	3,45	4.71	732	2.05	156	85.71	2,102	4.48
Part Hawaiian	49,935	11.80	31,367	12.17	7,90	10.78	2,647	7.43	19	10.44	6,007	12.80
Caucasian	103,788	24.52	82,086	31.86	9,82	13.38	4,464	12.53	1	0.55	6,588	14.04
Chinese	28,774	6.80	24,554	9.53	1,83	2.50	862	2.42	—	—	1,304	2.78
Filipino	52,570	12.41	19,067	7.40	12,84	17.53	10,149	28.48	—	—	7,659	16.32
Japanese	157,904	37.30	83,385	32.36	34,86	47.58	15,464	43.39	—	—	21,656	46.16
Other Races	15,984	3.77	10,141	3.94	2,56	3.50	1,318	3.70	—	—	1,603	3.42

Race	Lanai		Kahoolawe		Mokai		Outlying Islands*1		Palmyra		Honolulu City*2		Rural Oahu	
	Total	%	Total	%	Total	%	Total	%	Total	%	Total	%	Total	%
All Races	3,720	100.00	1	100.00	5,34	100.00	560	100.00	32	100.00	179,326	100.00	78,338	100.00
Hawaiian	115	3.09	—	—	72	13.65	21	3.75	5	15.63	5,157	3.04	1,607	2.05
Part Hawaiian	263	7.07	—	—	1,64	30.81	73	13.04	13	40.62	25,583	14.27	5,784	7.38
Caucasian	138	3.71	1	100.00	26	4.91	414	73.93	13	40.62	50,892	28.38	31,194	39.82
Chinese	71	1.91	—	—	13	2.58	12	2.14	1	3.13	22,445	12.52	2,109	2.69
Filipino	1,567	42.12	—	—	1,28	24.03	—	—	—	—	6,887	3.84	12,180	15.55
Japanese	1,310	35.22	—	—	1,21	22.79	1	0.18	—	—	60,593	33.79	22,792	29.10
Other Races	256	6.88	—	—	6	1.23	39	6.96	—	—	7,469	4.16	2,672	3.41

* Palmyra Island not included in Honolulu City population figures.

*1 The outlying islands (Baker, Canton, Enderbury, Howlitt, Jarvis, Johnston, and Midway), although not under the jurisdiction of the Territory of Hawaii, are for census purposes included in the totals for the Territory and for Honolulu County.

Respondent's Exhibit No. 4—(Continued)

JAPANESE POPULATION BY AREA AND BY BROAD AGE GROUPS FOR MALES FOR THE TERRITORY OF HAWAII, 1940 and 1930, AND BY COUNTIES AND PRINCIPAL CITIES, 1940.—(All 1940 figures in this table are preliminary and subject to revision)

County or city	Total	Male	Female	Males by broad age groups		
				Under 18	18 to 44	45 and older
Territory of Hawaii, total 1940	157,849	82,784	75,065	34,795	31,348	16,641
1930	139,631	75,008	64,623	36,774	21,849	16,385
Percent of increase.....	13.0	10.4	16.2	-5.4	43.5	1.6
1940 .						
Honolulu County	83,383	43,475	39,908	17,656	17,771	8,048
Honolulu city	60,591	31,221	29,370	12,199	13,476	5,546
Remainder of county.....	22,792	12,254	10,538	5,457	4,295	2,502
Hawaii County	34,864	18,271	16,593	7,955	6,057	4,259
Greater Hilo city	11,207	5,659	5,548	2,339	2,185	1,135
Remainder of county	23,657	12,612	11,045	5,616	3,872	3,124
Maui County	24,084	12,877	11,207	5,799	4,495	2,583
Wailuku city	3,591	1,864	1,727	825	711	328
Remainder of county	20,493	11,013	9,480	4,974	3,784	2,255
Kauai county	15,469	8,131	7,338	3,384	3,001	1,746
Kalawao County	49	30	19	1	24	5

• The corresponding percent of increase in the total population (all races) of the Territory of Hawaii was 14.9.

Harry E. White

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Respondent's Exhibit No. 4—(Continued)

BOARD OF HEALTH

TERRITORY OF HAWAII

POPULATION ESTIMATES AS OF JULY 1, 1940 AND JULY 1, 1941

Area	July 1, 1940	Jan. 1, 1941	July 1, 1941
City of Honolulu	180986	190573	200158
City & County of Honolulu (Exclusive of Honolulu City) ..	79899	95121	110345
City of Hilo ¹	24341	23504	22667
County of Hawaii: (Exclusive of Hilo City)	49222	47475	45731
County of Kalawao	465	465	464
County of Kauai	35956	34718	33479
County of Maui	55785	54140	52495
Territory	426654	445996	465339

Race	July 1, 1940 ²	July 1, 1940 ²	July 1, 1940 ²	Jan. 1, 1941	July 1, 1941	July 1, 1941	
	Total	Citizens	Non-Citizens	Total	Total	Citizens	Non-Citizens
Hawaiian	14359	14359	—	14303	14246	14246	—
Part-Hawaiian	50470	50470	—	51457	52445	52445	—
Puerto Rican	8322	8322	—	8391	8460	8460	—
Caucasian	106381	103700	2681	124004	141627	139299	2328
Chinese	28834	24245	4589	29035	29237	24886	4351
Japanese	157990	121312	36678	158762	159534	124351	35183
Korean	6854	4517	2337	6867	6881	4628	2253
Filipino	52607	17109	35498	52374	52060	18050	34010
All Others	837	807	30	843	849	832	17
Territory	426654	344841	81813	445996	465339	387197	78142

¹ Sec. 2801 R. L. 1935 as amended by Act 103 S. L. 1941² Revised estimates.

H. F. HARALSON, M. D.

H. F. Haralson

Territorial Commissioner of Public Health

Compiled by Bureau of Vital Statistics.

[Endorsed]: Filed 4-20-44.

RESPONDENT'S EXHIBIT No. 5

BIRTHS OF JAPANESE IN THE TERRITORY
OF HAWAII

and

NUMBER REPORTED TO THE JAPANESE CONSULATE
for the
FISCAL YEAR 1915-1941

Fiscal Year	Births reported to Japanese Consulate			Total births in Terr. of Hawaii		
	Total	Males	Females	Total	Males	Females
1915	4,606	•	•	3,377	1,821	1,556
1916	4,639	•	•	3,662	1,974	1,688
1917	4,918	•	•	4,260	2,321	1,939
1918	5,086	•	•	4,579	2,365	2,214
1919	4,807	•	•	4,391	2,356	2,035
1920	5,286	•	•	4,963	2,636	2,327
1921	5,001	•	•	4,910	2,624	2,286
1922	4,682	•	•	5,590	2,994	2,596
1923	4,629	•	•	5,689	2,954	2,735
1924	4,493	•	•	5,820	2,961	2,859
1925	4,335 (1,851)	•	•	6,186	2,233	2,953
1926	5,251 (343)	•	•	5,594	2,921	2,673
1927	2,756 (2,995)	•	•	5,751	2,878	2,873
1928	1,935 (3,213)	•	•	5,148	2,649	2,499
1929	1,724 (3,460)	889	835	5,184	2,667	2,517
1930	1,325 (3,330)	681	644	4,655	2,416	2,239
1931	1,186 (3,386)	611	575	4,572	2,353	2,219
1932	982 (3,416)	490	492	4,398	2,258	2,140
1933	825 (3,097)	449	403	3,922	2,024	1,898
1934	778 (2,915)	407	371	3,693	1,863	1,830
1935	731 (2,834)	390	341	3,565	1,803	1,762
1936	681 (2,570)	860	321	3,251	1,631	1,620
1937	660 (2,458)	353	307	3,118	1,593	1,525
1938	636 (2,527)	326	310	3,163	1,636	1,527
1939	691 (2,439)	368	323	3,130	1,615	1,515
1940	765 (2,572)	401	364	3,337	1,721	1,616
1941	860 (2,388)	466	394	3,248	1,625	1,623

45,794

• Not available.

Compiled by Bureau of Vital Statistics.

[Endorsed]: Filed 4-20-44.

RESPONDENT'S EXHIBIT No. 6

Memorandum:

7 April 1944

Estimate of Dual Citizens of Japanese Ancestry in Territory of
Hawaii as of 1 July 1941

1. Official estimate American-born Japanese	124,351
(Bureau of Vital Statistics)	
2. Japanese Births reported to Bureau of Vital Statistics and not reported to Japanese Consulate	45,794
3. Applications for expatriation	15,537
	61,331
4. Adjustment including deaths, migration and incomplete birth registration	1,125
5. Non dual citizens	60,206
6. Estimated No. of dual citizens	64,145
Aliens	35,183
Dual citizens	64,145
Total	99,328

[Endorsed]: Filed 4-20-44.

RESPONDENT'S EXHIBIT No. 7

Nationality Law

(Law #66, March 16, 1899;

Amended by Law #27 of 1916;

Amended by Law #19 of 1913.)

Article 1.

A child shall be Japanese if at the time of his birth the father is a Japanese. The same is true if the father had died prior to the birth of the child but was a Japanese at the time of his death.

Article 20.

A person who shall have acquired a foreign na-

tionality by his own wish shall lose his Japanese nationality.

Article 20, Sec. 2.

A Japanese born within a foreign country designated by Imperial Ordinance and who by virtue of birth in such country has acquired its nationality shall lose his Japanese nationality retroactive as at the time of birth unless an intention to retain Japanese nationality shall be manifested in accordance with the provisions of law. (This Article added by Law #27, 1916; amended by Law #19, 1924.)

Any person whose Japanese nationality has been retained in accordance with the provisions of the preceding section, or, any person who, by virtue of his birth prior to the designation as provided for in the next preceding section, within a designated foreign country, has acquired the nationality of such foreign country, may expatriate his Japanese nationality on his own desire if he has such foreign nationality and has his residence within such country.

Any person who shall have expatriated in accordance with the provision of the next preceding section shall lose his Japanese nationality.

Census Registration Law

Article 69.

A birth shall be reported within 14 days.

X X X X X

Home Ministry Ordinance #26; Nov. 17, 1924
Regulations for the Enforcement of the
Nationality Law.

Article 2.

If, in accordance with Sub-section 1, Section 2, Article 20 of the Nationality Law, retention of Japanese nationality is intended, the person required to report a birth pursuant to Paragraph 1 or Paragraph 2 of Article 72 of the Census Registration Law shall report and indicate such intention together with report of birth within the time prescribed in Article 69 of the Census Registration Law.

X X X X X

Imperial Ordinance #262, Nov. 17, 1924
Pertaining to Designation of Foreign Countries
under Sub-section 1, Section 2, Article 20, Nationality Law.

The following foreign countries are hereby designated in accordance with Sub-section 1, Section 2, Article 20 of the Nationality Law.

1. United States of America
2. Argentina
3. Brazil
4. Canada
5. Chile
6. Peru

Supplementary Rule)

This Ordinance shall take effect on December 1, 1924.

[Endorsed]: Filed 4-20-44.

RESPONDENT'S EXHIBIT No. 8-A

(Copy)

[In longhand]: Appeared in Star-Bulletin Nov. 13th 1943.

By Eugene Burns

Associated Press War Correspondent

Honolulu, Nov. —Oahu could be attacked by Jap planes within four months. Attacked, vital Pearl Harbor installations, army and navy hangars and supply dumps would be primary targets. If incendiaries were used some might be dropped on Honolulu's busy waterfront.

Worse, such an attack might be completed with few Jap planes shot down unless the Japs had the audacity to knife in with a repeat raid.

These are the considered opinions of military experts including Lt. Gen. Robert C. Richardson Jr., commanding army forces in Hawaii and in the central Pacific area.

The bright spot in the dark picture is that Oahu stands ready to destroy any surface or invasion attacks, regardless of their might.

Gen. Richardson expressed these views in a conversation after studying reports about the sighting of an enemy plane the night of October 16. That enemy plane was caught in searchlight beams near Pearl Harbor and escaped.

When the writer said that he was taking bets that Pearl Harbor will be attacked within six months, the general said that he would be willing to reduce the time to four months.

How would the Japs do it is the logical question.

The general replies: Cite one example wherein a 100-plane attack has been stopped. Never. The Germans still raid London. The United Nations' planes, despite flying over hundreds of miles of enemy territory containing radio and sound detection devices, fighter planes and antiaircraft positions, still get their bombloads to their targets with a loss of perhaps five per cent. Never more than 20 per cent.

In the Pacific we recently hit Rabaul catching more than 100 Jap planes on the ground. Wake, Tarawa, Rekata bay—to name a few—are other examples of catching the Jap with his planes down. On Doolittle's Tokyo raid, the carriers Hornet and Enterprise were intercepted 750 miles away by radio-equipped patrol boats and yet Toyko did not repel the attack. Too, the Japs successfully punched through attacks at Pearl Harbor, Manila, Midway, Wake, Guadalcanal, Port Darwin.

Navy Day, Admiral Chester W. Nimitz, commander in chief of the Pacific Ocean areas, stressed the danger of sneak attacks saying that despite the Japs' loss of many surface ships and airplanes "... they are still strong enough to inflict destructive attacks at great distances."

Why should Oahu be the target?

An attack upon this fortress fits into the military scheme. It is beyond calculation what it would be worth to the enemy to cause Pearl Harbor serious damage at this stage of the war. It is the base from which we must defeat Japan. And if this

naval base is destroyed it will delay the defeat of Japan. At the same time, an attack on Oahu offers the Jap carriers some hope of getting back to home base. Hitting the west coast, they might be outflanked and destroyed as was the German warship Bismarck. Hitting Aleutian bases is hardly worth risking the ships.

Too, when our battleline is drawn a thousand miles west of Pearl Harbor—as inevitably it must be—why not send an attacking force around the end of our line to slash at our operations base?

It. Gen. Simon Bolivar Buckner Jr., head of the Alaska Defense Command, often pressed this point home to me: "When faced by superior forces, as Japan is now, she chooses to attack rather than to fight a defensive action."

A second Pearl Harbor would fit into the Jap commands' mental picture. For vainglorious face-lifting what could be better propaganda than a second attack on Pearl Harbor with a second set of smoke-filled pictures.

With what would the Japs make such a raid?

It is known that Japan has a first rate carrier force with which she has been extremely cautious since Santa Cruz, October 26, 1942. The chances are remote that she will risk these in ship for ship action. To date, in every action the Japs used carriers only when they had us outnumbered two to one. There remains then the sneak raid use. The Jap command is not timid. Their first six months' bold army and navy campaign wrested

them one of the world's largest and richest empires. Audacity was the chief ingredient.

Why would the Japs attack in the next four months?

The Japs know North Pacific weather, much of which originates in the Jap Kurile islands and in the Japanese current north of Oahu. This warm current meeting the cold Aleutian weather breeds fogs. Within the coming four winter months, the fog belt moves closer to Oahu. December, two years ago, the Japs patiently waited for this fog, then as a storm swept south to Oahu, they sneaked in under its protecting cover.

Which part of the day would they likely come?

More than likely, morning. The Japs' carriers would be laying off during the previous day and they would probably make their run-in as soon as our afternoon patrols had flown out their leg and were returning to Oahu by dark. The Jap carriers would highspeed to within 350 miles of Oahu so that no extra gas tanks on the planes would displace part of their essential destructive bombloads. Bombers launched, the carriers would reverse course quickly.

The Japs more than likely would expend their pilots—each pilot and his comparatively light, quickly built plane would be part of the bomb. With this knowledge, he would ride the bomb home! The Jap has yet to show any fine feeling about saving carrier personnel. During Pearl Harbor, many Jap pilots dropped into the water unable to reach their fleeing carriers. At Dutch Harbor, Jap pilots were heard screaming for their departed carriers.

At Midway, they had no carriers left to come to. However, screening ships, instead of taking personnel off the burning carriers, turned their rifles upon their own ships and to help with the men, according to eyewitness Ens. George H. Gay of Torpedo Squadron 8. At Santa Cruz, the last carrier battle, Lt. Cmdr. William J. (Gus) Widhelm from a liferaft saw many Jap pilots crash dive into the ocean unable to overhaul their fleeing mother ships.

What about our (deletion) sound detection devices? Will they not alert The Rock in time?

The Japs who have many of these devices know their shortcomings as well as ours. (Deletion) Following previous attack patterns, the Japs could come in low, climb quickly and come in from a fairly high altitude to avoid antiaircraft fire and interceptor planes.

Even though our pilots slept in their interceptor planes and had their motors turning it is doubtful if a sufficient number could be at an effective height in time to repel the raid before it reached the objective.

What of our antiaircraft fire?

Most coastal cities have but one cheek facing the ocean threat: Oahu has both cheeks to slap and the back of the neck. With altitude, travelling fast as Jap planes do, the Jap bombers would release their load more than 5,000 feet out from the target.

That gives AA guns xxxxxxxx only a few seconds, about ten, if they are lucky before the bombs are released. And many of the gunners behind those batteries have never shot at live swiftly maneuvering

targets—only at sleeves towed slowly at a straight course and at an even speed. If 10 per cent of the enemy planes were shot down before they released, it would be a high score, military officials believe.

It remains that one Pearl Harbor attack (December 7, 1941) did prove successful despite almost weekly alerts and drills; that on March 5, 1942, an enemy plane or planes dropped three or four 500-pound bombs on Tantalus Drive behind Honolulu; that on October 16, 1943, midnight, a lone, slow enemy float-type plane got within searchlight distance of Oahu and was not shot down.

Finally, because the majority of these planes got away—just as ours do after every raid on Jap bases—it means that there is a good chance that many of the Jap planes may actually get away to make a return trip to their carrier—if they find it, or a water landing near destroyers to be rescued if the Jap high command has turned soft. As Gen. Richardson has pointed out: Don't our planes come back from our surprise attacks?

Rest assured, what can be done to repeal an enemy attack is being done on Oahu. The emphasis is on speed. Oahu's military garrison sprang to instant alert when the lone raider appeared last month. Each morning, the commanding general makes his rounds and to his officers he forever drives home this point: "We can be bombed: We will be bombed: We must be ready!" -eb/november 4/1943/2:28p—

AIR

Nov. 9, 1943 .

Dear Mr. Turnblad:

Will you please see that the following deletions are made in Gene Burns' airmailed interview with Gen. Richardson on Hawaii's defense weaknesses? The story inadvertently was mailed without submission to navy censorship.

24th graf, starting at top of page 4 make read "What about our sound detection" etc. Eliminating 2 words "Radio and."

25th graf starting "The Japs who have many" eliminate second sentence starting "Flying x x x." Next sentence make read "Following previous attack patterns, the Japs could come in low, climb quickly" etc. (inserting "could come in low,")

These changes, although they might appear minor, are considered very important by the navy and must be made.

Thanks,

/c/ MAC

Chief of bureau

Charles H. McMurtry

cc for cable desk

Please inform us via Press Wireless or cable when you're releasing story, so can use here and Hilo simultaneously.

MAC

[Endorsed]: Filed 4-20-44.

RESPONDENT'S EXHIBIT No. 8-B

A-4 The Sunday Star, November 14, 1943

Gen. Richardson Sees
Another Pearl Harbor
Attack in 4 Months

By EUGENE BURNS,

Associated Press War Correspondent

HONOLULU, Nov. 13.—The commanding general of Army forces in Hawaii believes another Japanese attack on Pearl Harbor is likely within the next four months.

Vital installations, Army and Navy hangars and supply dumps on Oahu Island would be the primary targets. If incendiaries were used some might be dropped on Honolulu's water front.

These are the considered opinions of military experts, including Lt. Gen. Robert C. Richardson, jr., commanding Army forces in Hawaii and in the Central Pacific area.

Gen. Richardson expressed the views in a conversation after studying reports about the sighting of an enemy plane the night of October 16. That enemy plane was caught in searchlight beams near Pearl Harbor, but it escaped.

Would Be Excellent Propaganda

When the writer said that he was taking bets that Pearl Harbor would be attacked within six months, the general said that he would be willing to reduce the time to four months.

An attack on this Fortress fits into the military

scheme. It is beyond calculation what it would be worth to the enemy to cause Pearl Harbor serious damage at this stage of the war. It is the base from which we must defeat Japan. And if this naval base is destroyed it will delay the defeat of Japan.

For vain glorious facelifting, what could be better propaganda than a second attack on Pearl Harbor?

The bright spot in the picture is that Oahu stands ready to destroy any surface or invasion force, regardless of its might.

Might Try Sneak Raid

Japan has a first rate carrier force with which she has been extremely cautious since Santa Cruz. October 26, 1942. The chances are remote that she would risk these in ship-for-ship action. To date in every action the Japanese used carriers only when they had us outnumbered two to one. There remains then the sneak raid.

Why would the Japanese attack within the next four months?

They know North Pacific weather, much of which originates in the Kurile Islands and in the Japanese Current north of Oahu. This warm current meeting the cold Aleutian weather breeds fogs. Within the coming four winter months, the fog belt moves closer to Oahu. December, two years ago, the Japs patiently waited for this fog, then as a storm swept south to Oahu, they sneaked in under its protecting cover.

Rest assured, what can be done to repel an enemy attack is being done on Oahu. The emphasis is on speed. Oahu's military garrison sprang to instant

alert when the raider appeared last month. Each morning, the commanding general makes his rounds and to his officers he forever drives home this point: "We can be bombed; we will be bombed; we must be ready."

[Endorsed]: Filed 4-20-44.

RESPONDENT'S EXHIBIT No. 10

Territory of Hawaii
Office of the Military Governor
Iolani Palace
Honolulu, T. H.

14 October 1943

General Orders
No. 38

RESCISSION OF GENERAL ORDERS

1. Rescission of General Orders No. 31, this Office, 25 August 1943.

1.01. General Orders No. 31, this office, 25 August 1943, hereby is rescinded.

By order of the Military Governor of the Territory of Hawaii:

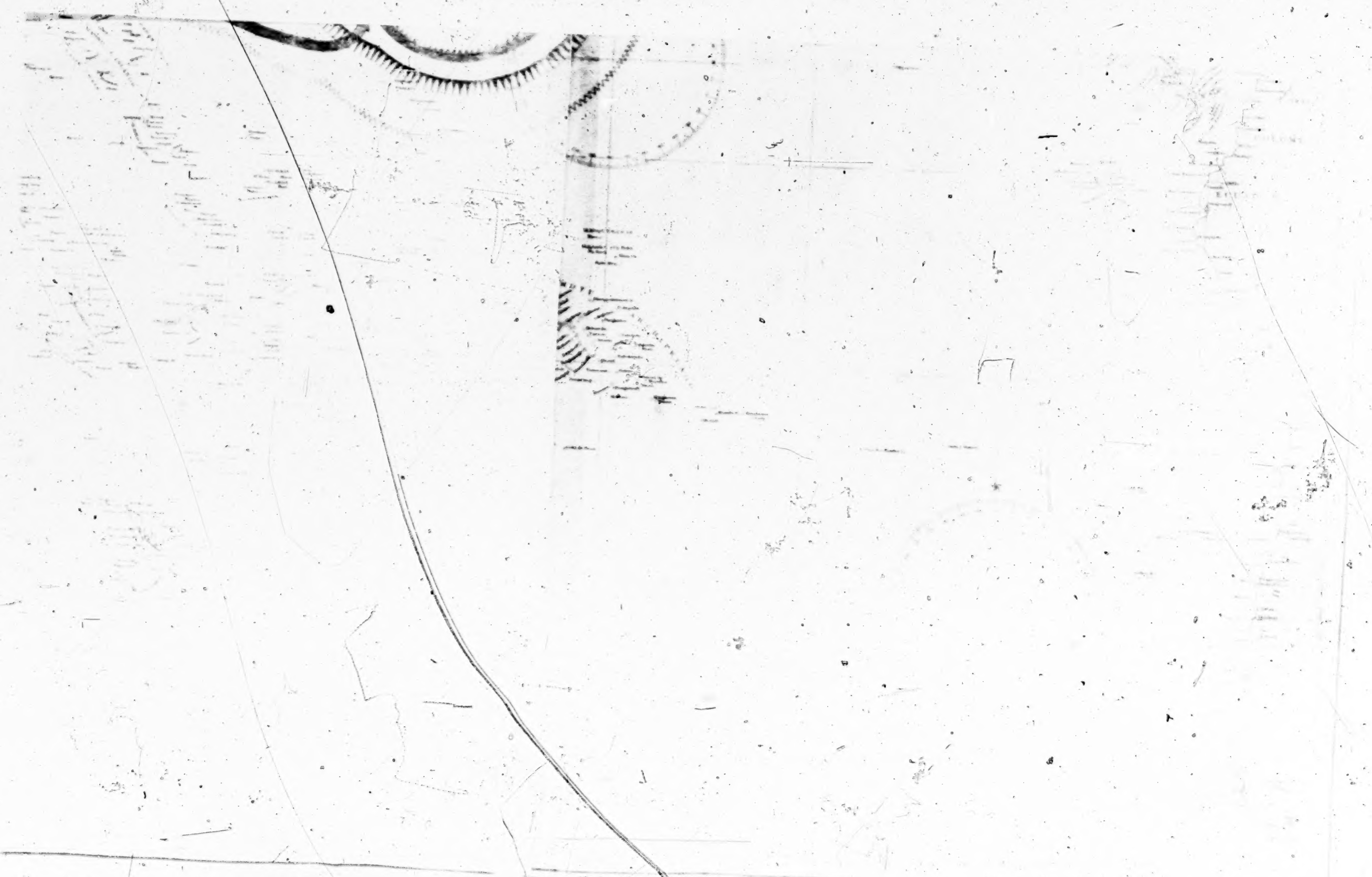
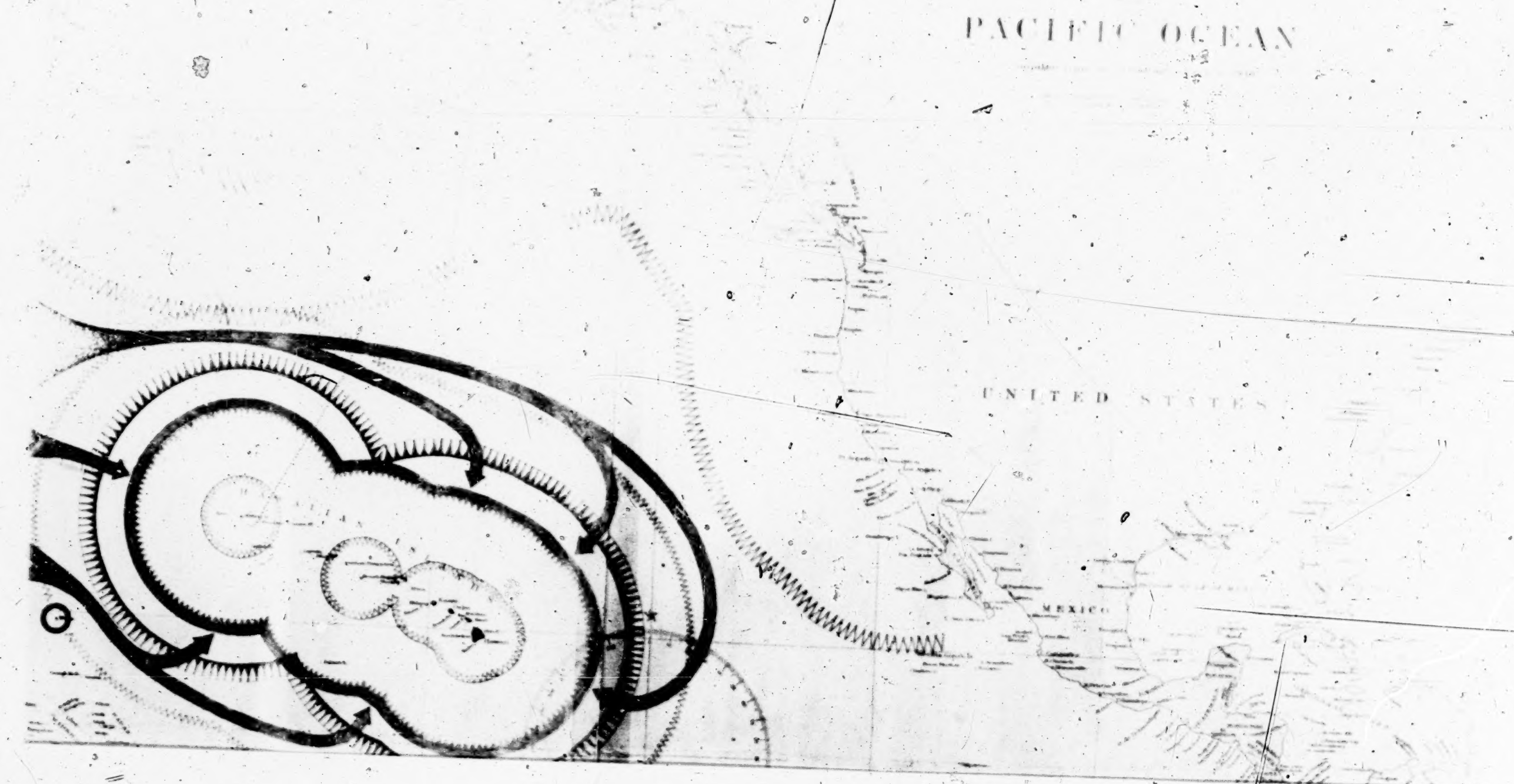
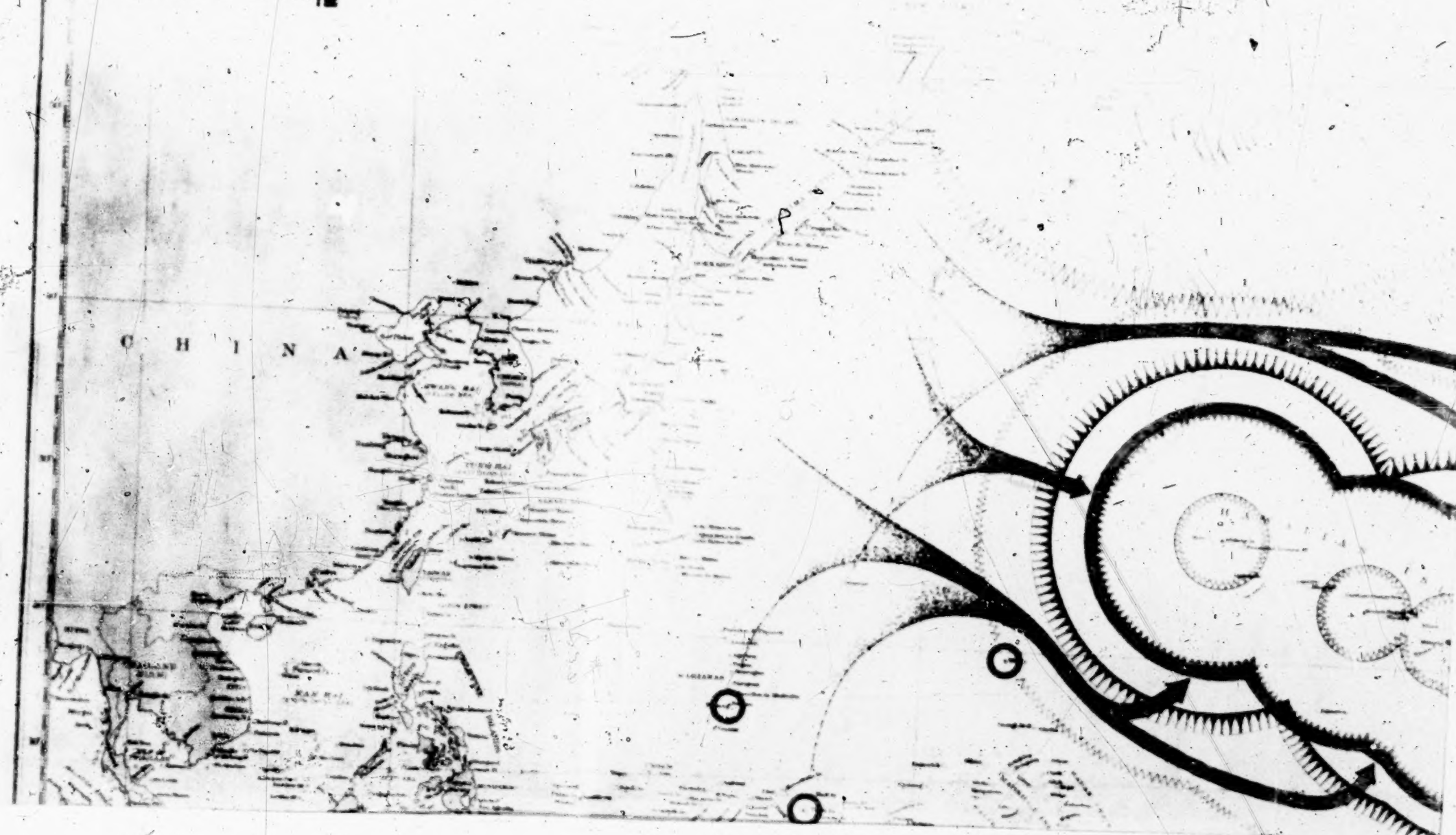
/s/ WM. R. C. MORRISON
Wm. R. C. Morrison
Colonel, J. A. G. D.
Executive

A True Copy:

ROBERT ~~B.~~ GRIFFITH
Robert B. Griffith
Major, Infantry

[Endorsed]: Filed 4-20-44.

H.C.No.300
Respondent's
Exh. No. 9
admitted 4-20-44



RESPONDENT'S EXHIBIT No. 11

THE NAVY'S REPORT ON PEARL HARBOR

Washington, Dec. 5 (UP)—Following is text of the Navy department's report on Pearl Harbor:

1. On the morning of Dec. 7, 1941, Japanese aircraft temporarily disabled every battleship and most of the aircraft in the Hawaiian area. Other naval vessels, both combatant and auxiliary, were out of action and certain shore facilities at the army air bases at Hickam and Wheeler Fields and at the naval air stations at Ford Island and Kaneohe Bay were damaged. The aircraft were all replaced within a few days and interference with facilities generally was limited to a matter of hours.

2. When the Japanese attacked Pearl Harbor, two surface ship task forces of the Pacific Fleet were carrying out assigned missions at sea and two such task forces were at the main base following extensive operations at sea. Discounting small craft, 86 ships of the Pacific fleet were moored in Pearl Harbor. Included were eight battleships, seven cruisers, 28 destroyers and five submarines. No United States aircraft carriers were present.

Five Battleships Disabled

3. As a result of the Japanese attack, five battleships—the Arizona, Oklahoma, California, Nevada and West Virginia—and three destroyers—the Shaw, Cassin and Downes—the minelayer Oglala, the target ship Utah and a large floating drydock either were sunk or damaged so severely that they

would serve no military purposes for some time. In addition, three battleships—the Pennsylvania, Maryland and Tennessee—three cruisers—the Helena, Honolulu and Raleigh—the seaplane carrier Curtiss and the repair ship Vestal were damaged.

4. Of the 19 naval vessels listed above as sunk or damaged, the 26 year old battleship Arizona will be the only one permanently and totally lost. Preparations for righting the Oklahoma now are in process, although a final decision as to the wisdom of accomplishing this work at this time has not been made.

Salvage, Repair 15 Ships

Main and auxiliary machinery of approximately 15 percent of the value of the Cassin and Downes was saved. The other 15 vessels either have been or will be salvaged and repaired.

The eight vessels described in the second sentence of paragraph three returned to the fleet months ago. A number of the vessels described in the first sentence of paragraph three now are in full service, but certain others which required extensive machinery and intricate electrical overhauling as well as refloating and hull repairing are not yet ready for battle action. Naval repair yards are taking advantage of these inherent delays to install numerous modern features of improvement.

To designate these vessels by name now would give the enemy information vital to his war plans. Similar information regarding enemy ships which our forces subsequently damaged but did not destroy is denied to us.

On Dec. 15, only eight days after the Japanese attack and at a time when there was an immediate possibility of the enemy's coming back the Secretary of the Navy announced that the *Arizona*, *Shaw*, *Cassin*, *Downes*, *Utah*, and *Oglala* had been lost, the *Oklahoma* capsized and other vessels damaged.

Repairs Exceeded Hopes

Fortunately, salvage and repair accomplishments at Pearl Harbor exceeded the most hopeful expectations.

Eighty naval aircraft of all types were destroyed by the enemy. In addition, the army lost 97 planes at Hickam and Wheeler Fields. Of these, 23 were bombers, 66 were fighters and eight were other types.

The most serious American losses were in personnel. As a result of the raid on Dec. 7, 2,117 officers and enlisted men of the Navy and Marine Corps were killed, 960 still are reported missing and 876 were wounded but survived. Army casualties were as follows: 226 officers and enlisted men killed or later died of wounds, 396 wounded, most of whom now have recovered and returned to duty.

At 7:55 a.m. Dec. 7, Japanese dive-bombers swarmed over the Army air base at Hickam Field and the Naval air station on Ford Island. A few minutes earlier, the Japanese had struck at the Naval air station at Kaneohe Bay. Bare seconds later, enemy torpedo planes and dive-bombers swung in from various sectors to concentrate an attack on heavy ships in Pearl Harbor.

Attack Based on Exact Data

The enemy attack, aided by the element of surprise and based on exact information, was very successful. Torpedo planes, assisted effectively by dive-bombers, constituted the major threat in the first phase of the Japanese attack, lasting approximately half an hour. Twenty-one torpedo planes made four attacks and 30 dive-bombers came in eight waves during the period. Fifteen horizontal bombers also participated in this phase of the raid.

Although the Japanese launched their initial attack as a surprise, the battleships were ready and machineguns opened fire at once and were progressively augmented by remaining antiaircraft batteries as all hands promptly were called to general quarters. Machine guns brought down two and damaged others in the first wave of torpedo planes. Practically all battleship antiaircraft batteries were firing within five minutes, cruisers within an average time of four minutes, and destroyers, opening up with their machine guns almost immediately, averaged seven minutes in bringing all antiaircraft guns into action.

From 8:25 to 8:40 a.m., there was a comparative lull in the raid, although air activity continued with sporadic attacks by dive and horizontal bombers. This respite was terminated by the appearance of horizontal bombers which crossed and recrossed their targets from various directions and caused serious damage.

Dive-Bombers Return

While the horizontal bombers were continuing their raids, Japanese dive-bombers reappeared, probably being the same ones that participated in the earlier attacks. This phase, lasting about half an hour, was devoted largely to strafing. All enemy aircraft retired by 9:45 a.m.

Prior to the Japanese attack there were 202 U. S. naval aircraft of all types on the island of Oahu in flying condition, but 150 of these were permanently or temporarily disabled by the enemy's concentrated assault, most of them in the first few minutes of the raid. Of the 52 remaining naval aircraft, 38 took to the air on Dec. 7, the other 14 being ready too late in the day or being blocked from take-off positions.

Of necessity, the Navy was compelled to depend on antiaircraft fire for its primary defensive weapon and this condition exposed the fleet to continuous air attack.

By coincidence, 18 scout bombing planes from a U. S. aircraft carrier were en route and arrived at Pearl Harbor during the raid. These were included in the foregoing figures. Four of these scout bombers were shot down, 13 of the remaining 14 taking off again in search of the enemy. Seven patrol planes were in the air when the attack started.

There was a total of 273 army planes on the Island of Oahu on Dec. 7. Very few of these were able to take off because of damage to runways at Hickam and Wheeler Fields.

It was difficult to determine the total number of enemy aircraft participating in the raid, but a careful analysis of all reports makes it possible to estimate the number as 21 torpedo planes, 48 dive-bombers and 36 horizontal bombers, totalling 105 planes of all types. Undoubtly certain fighter planes also were present, but these were not distinguished by types and are included in the above figures.

Japs Lost 48 Planes

The enemy lost 28 aircraft due to Navy action, and the few Army pursuit planes that were able to take off shot down more than 20 Japanese planes. In addition, three submarines of 45 tons each were accounted for.

Damage suffered by the U. S. Pacific Fleet as a result of the Japanese attack on Dec. 7 was most serious, but the repair job now has been nearly completed and thanks to the inspired and unceasing efforts of naval and civilian personnel attached to various repair yards, especially at Pearl Harbor itself, this initial handicap soon will be erased forever.

[Endorsed]: Filed 4-20-44.

RESPONDENT'S EXHIBIT No. 12

Confidential

Headquarters United States Army Forces

Central Pacific Area

Office of the Assistant Chief of Staff
for Military Intelligence

Counter Intelligence Division

Box 3, APO 456

In reply refer to:

10 April 1944

MEMORANDUM FOR THE OFFICE OF THE
MILITARY GOVERNOR:

Subject: Japanese Internment

The following data are from the official files of this office:

a. Number of Japanese interned, Territory of Hawaii, from
7 December 1941, to 10 April 1944

1,396

Aliens	Dual Citizens	American Citizens
857	504	35

(1) Released or Paroled 217

Aliens	Dual Citizens	American Citizens
137	60	20

(2) Relocated on Mainland 313

Aliens	Dual Citizens	American Citizens
7	300	6

(3) Repatriated to Japan (All Aliens) 70

(4) Deceased (All Aliens) 10

610

(5) Remainder in Custody 786

	Aliens	Dual Citizens	American Citizens
On Mainland	597	—	—
In Territory	36	144	9

BYRON M. MEURLOTT

Major, M. I.,

Assistant A. C. of S., G-2 (CID)

Confidential

[Endorsed]: Filed 4-20-44.

RESPONDENT'S EXHIBIT No. 13

In the District Court of the United States in and
for the Territory of Hawaii

Habeas Corpus No. 298

In the Matter of the Application of

LLOYD C. DUNCAN

For a Writ of Habeas Corpus.

United States of America

Territory of Hawaii

City and County of Honolulu ss.

I, C. W. Nimitz, Admiral, U. S. Navy, Commander in Chief, U. S. Pacific Fleet and Pacific Ocean Areas being first duly sworn on oath depose and say:

That I was graduated from the United States Naval Academy in 1905 as a Passed Midshipman and have been and still am on active duty in the United States Navy; that since that time I have received periodic promotion in rank including my promotion to the rank of Admiral on December 31, 1941; that on December 18, 1941 I was appointed Commander in Chief of the Pacific Fleet and assumed command thereof 31 December 1941, and thereafter I was appointed Commander in Chief of the Pacific Ocean Areas which said commands I have held continuously since the times of my appointments.

During the course of my active duty I have been assigned duty on the battleship Ohio, the light cruiser Baltimore, the gunboat Panay and the

destroyer Decatur. I have commanded the submarines Plunger, C-5, D-1 and E-1, and in May 1912 became group commander of the Atlantic submarine flotilla; thereafter I was ~~assigned~~ duty at the Navy Yard, New York, supervising the construction of Diesel engines, two of which were installed in the tanker Maumee, in which I served in 1916 as chief engineer and executive officer; thereafter in 1917-1918 I served on the staff of Commander, Submarines, in the cruiser Chicago.

That in September 1918 I was assigned duty in the office of the Chief of Naval Operations, Washington, D. C., and in May 1919 returned to sea as executive officer of the battleship South Carolina.

In July 1920 I came to the Hawaiian Area as Commander Submarine Division 14 and as Commander, Submarine Base, Pearl Harbor.

Thereafter on June 1923 I graduated from the Naval War College and joined the staff of the Commander in Chief, Battle Fleet, Admiral S. S. Robison, with whom I continued as assistant chief of staff when Admiral Robison became Commander in Chief of the United States Fleet.

In 1929 I assumed command of Submarine Division 20 and from 1931 to 1933 commanded the Destroyer Base, San Diego; thereafter from 1933 to 1935 I commanded the heavy cruiser Augusta until 1935 when I became Assistant Chief of the Bureau of Navigation; thereafter in 1938 I assumed command of Battleship Division One, and remained on said command until detached in 1939 to become Chief of the Bureau of Navigation.

Based on my experience and observations gained through my official position in the Territory of Hawaii and the Pacific Ocean Areas since December 18, 1941, I make the following statements of fact and expressions of opinion:

1. That the Territory of Hawaii now is, and at all times since the attack thereon and the invasion thereof by the armed forces of the Empire of Japan on December 7, 1941, has been, an actual theater of the war between the United States and the Empire of Japan; that active military, naval, and air operations of said war now exist and are being conducted and have existed and continued in the said Territory of Hawaii since the said attack thereon and invasion thereof on December 7, 1941, as aforesaid.

2. That it is my opinion that the said Territory of Hawaii now is, and at all times since the attack thereon and the invasion thereof by the armed forces of the Empire of Japan on December 7, 1941, has been, in imminent danger of invasion by the armed forces and other agents and agencies of the Empire of Japan; that it is my opinion that the public safety of the Territory of Hawaii and of the United States now requires, and at all times since the said attack on and the said invasion of the said Territory of Hawaii by the said armed forces of the Empire of Japan on December 7, 1941, has required, that the privilege of the writ of habeas corpus be and remain suspended within the Territory of Hawaii and that the Territory of Hawaii be placed and remain under martial law; that it is my opinion that the said suspension of the privilege of

the writ of habeas corpus now is necessary, and has been necessary at all times since the said attack and invasion upon December 7, 1941, for the prosecution in the Territory of Hawaii by the United States of the war against the Empire of Japan; that it is my opinion that martial law now is necessary, and at all times since the said attack and invasion on December 7, 1941, has been necessary, for the prosecution in the Territory of Hawaii by the United States of the war against the Empire of Japan; that it is my opinion that the issuance and enforcement of the General Orders, numbers 1 to 53, issued by Robert C. Richardson, Jr., Lieutenant General, United States Army, in his capacity as the Commanding General, United States Army Forces, Central Pacific Area, and as the Military Governor of the Territory of Hawaii; between March 10, 1943, and March 2, 1944, both dates inclusive, and the enforcement thereof, now are and at all times since the issuance thereof, were necessary for the prosecution in the Territory of Hawaii by the United States of the war against the Empire of Japan; that it is my opinion that the trial and conviction of Lloyd Clifford Duncan on March 2, 1944, by Arthur L. Mundo, Lieutenant Commander, United States Navy, (Ret.), Provost Court, Pearl Harbor, T. H., in Case No. 650-44 of said Provost Court, for a violation of Paragraph 8.01, Title 8, General Orders No. 2, Office of the Military Governor, 10 March 1943, and the imposition and execution of the sentence imposed upon said Lloyd Clifford Duncan in said case, were and are necessary for the prosecu-

tion in the Territory of Hawaii by the United States of the said war against the Empire of Japan.

/S/ C. W. NIMITZ

C. W. Nimitz

Admiral, U. S. Navy

Commander in Chief U. S.

Pacific Fleet, and Pacific

Ocean Areas

Subscribed and sworn to before me this 22nd day of March, 1944.

/S/ NAT LOGAN SMITH

Notary Public, First Judicial Circuit, Territory of Hawaii.

My commission expires March 28, 1947.

[Endorsed] Filed 4/20/44.

RESPONDENT'S EXHIBIT No. 14.

In the District Court of the United States in and for the Territory of Hawaii

Habeas Corpus No. 298

In the Matter of the Application of

LLOYD C. DUNCAN.

For a Writ of Habeas Corpus.

United States of America

Territory of Hawaii

City and County of Honolulu—ss.

I, Robert C. Richardson, Jr., Lieutenant General, United States Army, Commanding General, United

States Army Forces, Central Pacific Area, being first duly sworn on oath depose and say:

That I was graduated from the United States Military Academy June 15, 1904, and commissioned a Second Lieutenant; that thereafter and at various times I received succeeding promotions in the United States Army including my promotion to the rank of Lieutenant General (temporary) on June 1, 1943.

That I served with the United States Army in the Philippines during which service I was engaged in the field against hostile forces at Jolo and participated in various engagements against the insurgents during the year 1905; that my service thereafter was within the continental United States until I was again ordered to the Philippines, where I served until March 4, 1912; that thereafter I returned to the continental United States where I served at various stations, including a tour of duty as an assistant professor at the United States Military Academy, until December 1, 1917, at which time I was ordered to France where I served as Aide and observer with foreign armies until January 9, 1918.

I served with the Operations Division, General Staff, American Expeditionary Forces, to June 14, 1918; as Liaison Officer for G.H.Q. with Allied Headquarters and with American Armies, Corps and Divisions during the operations of 1918; escorted Allied Missions in St. Mihiel offensive; was Liaison Officer at Headquarters, 1st Army, for opening of Meuse-Argonne offensive; was repre-

representative of Operations Officer, at Advance General Headquarters, to January 28, 1919; served with Reparations Board, Peace Commission, Paris, France, to February 28, 1919; served on temporary duty at Headquarters, Third Army, Coblenz, Germany, and was attached to Headquarters, 10th French Army, Mayence, Germany, to June 1, 1919; returned to the United States on July 6, 1919, and served with the War Plans Division, War Department General Staff, Washington, D. C., to August 9, 1920; and in the office of the Chief of Cavalry, to January 28, 1921.

After approximately two years of further service in the Philippine Department I returned to the United States on April 6, 1923, and thereafter I attended the Command and General Staff School, Fort Leavenworth, Kansas, and the Ecole Supérieure de Guerre, Paris, France. Thereafter I served as Military Attache, Rome, Italy, to March 21, 1928.

I was appointed Commanding Officer, Provisional Battalion, and Executive Officer, United States Military Academy, and served as such until March 2, 1929; and Commandant of Cadets and Head of the Department of Tactics to June 30, 1933. Thereafter I was graduated on June 30, 1934, from the Army War College, Washington, D. C., and served with the Military Intelligence Division, War Department General Staff, to December 7, 1935.

My commands thereafter included the 5th Cavalry at Fort Clark, Texas, until June, 1938, the 2nd Cavalry Brigade at Fort Bliss, Texas. On Feb-

February 11, 1939 I was appointed as Commandant of the Cavalry School, Fort Riley, Kansas; commanded the 1st Cavalry Division, Fort Bliss, Texas; and on February 11, 1941 was appointed Director of the Bureau of Public Relations, Washington, D. C.

On July 17, 1941 I was assigned to command the VII Army Corps with headquarters at Birmingham, Alabama and later, after the outbreak of hostilities, was ordered to San Jose, California as Commanding-General of the Northern California Sector of the Western Defense Command and VII Army Corps.

In May 1942 I was selected to represent the Chief of Staff on a tour of inspection in the Pacific during which I conferred with General MacArthur in Australia and visited Hawaii, New Caledonia and New Guinea.

On June 1, 1943 I assumed the command of the Hawaiian Department and the position of Military Governor of the Territory of Hawaii and thereafter on August 14, 1943, in compliance with a directive from the President, I assumed command of all United States Army forces in the Central Pacific Area which said command I held on 2 March 1944 and still hold.

In my official position as Commanding General, United States Army Forces, Central Pacific Area, I have access to and there is communicated to me Military and Naval information of a highly secretive and confidential nature relating to the prosecution of the war against the Empire of Japan by the

United States within this theater of war of which the Territory of Hawaii constitutes a part, and based thereon and my experience and observations in the Territory of Hawaii and the entire Central Pacific Area, I make the following statements of fact and expressions of opinion:

1. That the Territory of Hawaii now is, and at all times since the attack thereon and the invasion thereof by the armed forces of the Empire of Japan on December 7, 1941, has been, an actual theater of the war between the United States and the Empire of Japan; that active land, naval, and air operations of said war now exist and are being conducted and have existed and continued in the said Territory of Hawaii since the said attack thereon and invasion thereof on December 7, 1941, as aforesaid.

2. That it is my opinion that the said Territory of Hawaii now is, and at all times since the attack thereon and the invasion thereof by the armed forces of the Empire of Japan on December 7, 1941, has been, in imminent danger of invasion by the armed forces and other agents and agencies of the Empire of Japan; that it is my opinion that the public safety of the Territory of Hawaii and of the United States now requires, and at all times since the said attack on and the said invasion of the said Territory of Hawaii by the said armed forces of the Empire of Japan on December 7, 1941, has required, that the privilege of the writ of habeas corpus be and remain suspended within the Territory

of Hawaii and that the Territory of Hawaii be placed and remain under martial law; that it is my opinion that the said suspension of the privilege of the writ of habeas corpus now is necessary, and has been necessary at all times since the said attack and invasion upon December 7, 1941, for the prosecution in the Territory of Hawaii by the United States of the war against the Empire of Japan; that it is my opinion that martial law now is necessary, and at all times since the said attack and invasion on December 7, 1941, has been necessary, for the prosecution in the Territory of Hawaii by the United States of the war against the Empire of Japan; that it is my opinion that the issuance of General Orders, Numbers 1 to 53, inclusive, issued by me in my capacity as the Commanding General, United States Army Forces, Central Pacific Area, and as the Military Governor of the Territory of Hawaii, between March 10, 1943, and March 2, 1944, both dates inclusive, and the enforcement thereof, now are and at all times since the issuance thereof, now are and at all times since the issuance thereof, were necessary for the prosecution in the Territory of Hawaii by the United States of the war against the Empire of Japan; that it is my opinion that the trial and conviction of Lloyd Clifford Duncan on March 2, 1944, by Arthur L. Mande, Lieutenant Commander, United States Navy (Ret.), Provost Court, Pearl Harbor, T. H., in Case No. 650-44 of said Provost Court, for a violation of Paragraph 8.01, Title 8, General Orders No. 2, Office of the Military Governor, 10 March 1943, and the imposition and execution of the sentence imposed upon

said Lloyd Clifford Duncan in said case, were and are necessary for the prosecution in the Territory of Hawaii by the United States of the said war against the Empire of Japan.

/s/ ROBERT C. RICHARDSON, JR.

Robert C. Richardson, Jr.

Lieutenant General, United
States Army

Commanding General, United
States Army Forces, Cen-
tral Pacific Area

Subscribed and sworn to before me this 24th day
of March, 1944.

/s/ N. F. JOHNSON

Notary Public, First Judicial Circuit, Territory of
Hawaii

My commission expires November 28, 1946

[Endorsed]: Filed 4/20/44.

RESPONDENT'S EXHIBIT No. 15

Territory of Hawaii

Office of the Military Governor

Fort Shafter, T. H.

7 December 1941

(General Orders)

(No. 4)

By virtue of the power vested in me as Military Governor, the following policy governing the trial of civilians by Military Commission and Provost

Courts is announced for the information and guidance of all concerned:

1. Military commissions and provost courts shall have power to try and determine any case involving an offense committed against the laws of the United States, the laws of the Territory of Hawaii or the rules, regulations, orders or policies of the military authorities. The jurisdiction thus given does not include the right to try commissioned and enlisted personnel of the United States Army and Navy. Such persons shall be turned over to their respective services for disposition.

2. Military commissions and provost courts will adjudge sentences commensurate with the offense committed. Ordinarily, the sentence will not exceed the limit of punishment prescribed for similar offenses by the laws of the United States or the Territory of Hawaii. However, the courts may adjudge an appropriate sentence.

3. The record of trial in cases before military commissions will be substantially similar to that required in a special court-martial. The record of trial in cases before provost courts will be substantially similar to that in the case of a Summary Court-Martial.

4. The procedure in trials before Military commissions and provost courts will follow, so far as it is applicable, the procedure required for Special and Summary Courts-Martial respectively.

5. The records of trial in all cases will be forwarded to the Department Judge Advocate. The

sentences adjudged by provost courts shall become effective immediately. The sentence adjudged by a military commission shall not become effective until it shall have been approved by the Military Governor.

6. All charges against civilian prisoners shall be preferred by the Department Provost Marshall, or one of his assistants.

7. The Provost Marshall is responsible for the prompt trial of all civilian prisoners and for carrying out the sentence adjudged by the court.

8. Charges involving all major offenses shall be referred to a military commission for trial. Other cases of lesser degree shall be referred to provost courts. The maximum punishment which a provost court may adjudge is confinement for a period of five years, and a fine of not to exceed \$5,000. Military commissions may adjudge punishment commensurate with the offense committed and may adjudge the death penalty in appropriate cases.

9. In adjudging sentences, provost courts and military commissions will be guided by, but not limited to the penalties authorized by the court-martial manual, the laws of the United States, the Territory of Hawaii, the District of Columbia, and the customs of laws in like cases.

Harry E. White

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By order of the Military Governor:

(Signed) **THOMAS H. GREEN**

Thomas H. Green

Lt. Col., J.A.G.D.

Executive Officer

A True Copy:

(s) **JAMES F. HANLEY,**

Major, J.A.G.D.

[Endorsed]: Filed 4/20/44.

RESPONDENT'S EXHIBIT No. 16

Honolulu Star-Bulletin, Wednesday, March

10, 1943

**GENERAL ORDERS
OF THE
MILITARY GOVERNOR
TERRITORY OF HAWAII**

The proclamations of February 8, 1943, provided for the relinquishment to the proper civilian authorities of a portion of the functions created and performed under my direction as Military Governor. Those proclamations also provided that those parts of all military orders affecting the functions so relinquished were to be revoked thirty days after the date of the proclamations.

I have recognized that the rescission of some General Orders and the retention of others might confuse the public unless proper clarification is

Respondent's Exhibit No. 16—(Continued)

made of the General Orders which will continue in effect. Therefore, it has been considered advisable to rescind all previous General Orders of this office, effective March 10, 1943, and to issue a new series of General Orders codifying all regulations presently necessary. The new series consists of fourteen General Orders which are the only ones applicable in the Territory of Hawaii commencing this date, March 10, 1943. They are published herewith, grouped in one publication for convenience.

No district regulations will be published for separate islands; regulations applicable to one of the islands of the Territory and not to others, will be considered on the recommendation of the Commanding Generals of the respective districts and will be incorporated in the General Orders hereafter issued by this office.

It is recognized that amendments to these General Orders may be necessary and additional Orders may issue covering new subjects. These will appear in your newspapers from time to time.

It is, of course, difficult to promulgate regulations with the maximum of brevity and still convey the full contents of the desired policy. Any question of interpretation or any suggestions will be given prompt consideration.

DELOS C. EMMONS

Lieutenant General, United States Army
Commanding General, Hawaiian Department
Military Governor of the Territory of Hawaii

Respondent's Exhibit No. 16—(Continued)

General Orders No. 1

Appointment of Executive and Assistant
Executive

General Orders No. 2

Courts and Commissions and Offenses Relating
to the Administration of Justice

General Orders No. 3

General Orders No. 4

Blackout

Air Raid

General Orders No. 5

Civilian Security

General Orders No. 6

Aliens

General Orders No. 7

Military Areas

General Orders No. 8

Identification and Registration

General Orders No. 9

Communications

General Orders No. 10

Labor

General Orders No. 11

Military Property

General Orders No. 12

Travel

Respondent's Exhibit No. 16—(Continued)

General Orders No. 13

Rescission of General Orders Nos. 1 to 181,
Inclusive, Saving Clause, and Effective Date
of General Orders Nos. 1 to 14, Inclusive,
This Office, Dated 10 March 1943

General Orders No. 14

Organization of the Office of the Military Gov-
ernor

10 March 1943

GENERAL ORDERS No. 1

1. Executive.

1.01 Thomas H. Green, Brigadier General,
A.U.S., hereby is appointed Executive of the Mil-
itary Governor.

2. Assistant Executive.

2.01 William R. C. Morrison, Colonel, J.A.G.D.,
hereby is appointed Assistant Executive of the
Military Governor.

DELOS C. EMMONS

Lieutenant General, United States Army
Commanding General, Hawaiian Department
Military Governor of the Territory of Hawaii

Respondent's Exhibit No. 16 (Continued)

16 March 1943

GENERAL ORDERS No. 2

Courts and Commissions and Offenses
Relating to the Administration of Justice

1. Martial Law and the Writ of Habeas Corpus.
2. Civil Courts.
3. Provost Courts and Military Commissions.
4. Military Commissions.
5. Provost Courts.
6. Provost Court Commissioner.
7. Attempts and Conspiracies to Violate a General Orders.
8. Interference with Military Police and Personnel.
9. False Statements to, or Misusing Authorizations Granted by, Agencies of the Military Governor.
10. Power of Civilian Police Officer to Make Arrests for Violation of General Orders of the Military Governor.
11. Definition of "Person."
12. Prosecution of Offenses under Rescinded General Orders.

1. Martial Law and the Writ of Habeas Corpus.

1.01. A state of martial law remains in effect and the privilege of the writ of habeas corpus has been, and remains, suspended.

2. Civil Courts (Pursuant to Proclamations of February 8, 1943).

Respondent's Exhibit No. 16—(Continued)

2.01 Civil courts are authorized to exercise their normal jurisdiction as provided by law, except that such courts shall not have jurisdiction of the following:

Criminal prosecutions against members of the armed forces. Members of auxiliary armed forces shall be included within the term "armed forces" after induction into the service and also before induction in respect of any act or omission certified by the Commanding General, Hawaiian Department, to be in the line of duty;

Civil suits against members of the armed forces, as defined above, in respect of any act or omission certified by the Commanding General, Hawaiian Department, to be in the line of duty;

Criminal prosecutions for violations of military orders.

2.02. The Commanding General, Hawaiian Department, may waive the above exception with respect to any particular prosecution or suit, or any class of prosecutions or suits, thereby permitting such prosecutions or suits to be tried in the appropriate court of the territory or in the United States District Court for Hawaii, as the case may be.

3. Provost Courts and Military Commissions.

3.01. Provost Courts and Military Commissions shall have jurisdiction and power, and hereby are authorized and empowered, to try and determine any case, matter, or proceeding involving any violation or violations by a civilian or civilians of the

Respondent's Exhibit No. 16—(Continued)

rules, regulations, proclamations, or Orders of the Military or Naval authorities, or of the Military Governor of the Territory of Hawaii, or of the laws of war; and, such Provost Courts and Military Commissions in addition to the power to impose upon or against any person or persons charged or tried in any such case, matter, or proceeding, the penalties, forfeitures, and similar punishment otherwise authorized by the General Orders of the Military Governor, shall have power, and hereby are authorized and empowered, to punish any such person or persons committing such violation or violations, or offense or offenses, by fine or imprisonment with or without hard labor, or by both such fine and imprisonment, as may be ordered or provided in the General Orders of the Military Governor. Such Provost Courts or Military Commissions shall have jurisdiction, and power, and hereby are authorized and empowered, to try and punish members of the Armed Forces of the United States only for violations of any statute of the Territory of Hawaii, or of any ordinance, resolution, by-law, regulation, or rule of any city, city and county, ~~county~~, or other municipal corporation or political subdivision of the Territory of Hawaii, or of any order, regulation, or rule of the Military or Naval authorities or of the Military Governor of the Territory of Hawaii, regulating or relating to vehicular or pedestrian traffic. The concurrent jurisdiction of the Armed

Respondent's Exhibit No. 16—(Continued)

Forces of the United States to court-martial or otherwise discipline commissioned or enlisted personnel of their respective services for such traffic offenses is not withdrawn by anything herein contained.

3.02. Charges involving major offenses shall be referred to a Military Commission for trial and determination, unless otherwise ordered by the Military Governor of the Territory of Hawaii. Other cases involving charges of lesser degree shall be tried and determined by Provost Courts. Military Commissions and Provost Courts will adjudge appropriate sentences commensurate with the offense. In adjudging such sentences, Provost Courts and Military Commissions will be guided by, but not limited to or bound by, the penalties provided by the Courts-Martial Manual, the laws of the United States, the laws of the Territory of Hawaii, the laws of the District of Columbia, county, and city and county ordinances, and the customs of law in like cases. The maximum fine or confinement, or both fine and confinement, which a Provost Court may adjudge as punishment, is confinement with or without hard labor for a period not to exceed five (5) years, or a fine not to exceed five thousand dollars (\$5,000.00), or both such confinement and fine. The foregoing limitation on the fine or confinement, or fine and confinement, that a Provost Court may adjudge, shall not restrict the power and authority of such a Provost Court to order and

Respondent's Exhibit No. 16—(Continued)

direct the confiscation and destruction of property, the suspension, cancellation, or revocation of licenses, or such other penalties or sentences in addition to such fine or confinement, or both, as may be provided by this or any other General Orders of the Military Governor. Military Commissions may adjudge confinement with or without hard labor for any number of years, or for life, or may adjudge the death penalty, and may impose fines with or without such confinement, in any case tried and determined by a Military Commission. The sentences adjudged by a Provost Court shall become effective immediately. The sentence adjudged by a Military Commission shall not become effective until it shall have been approved by the Military Governor.

3.03. Any person who fails, neglects, or refuses to comply with any subpoena, summons, citation, notice, warrant of arrest, commitment, order of commitment, or other process, issued by a Provost Court, a Military Commission, the Trial Judge Advocate of a Military Commission, or by any duly authorized agent or representative of such a Provost Court or Military Commission, or who uses any menacing words, signs or gestures in the presence of a Provost Court or Military Commission, or who disturbs the proceedings of a Provost Court or Military Commission by a riot or disorder or in any manner, or who in any manner or way wilfully disobeys any rule or order of a Provost Court

Respondent's Exhibit No. 16—(Continued)
or Military Commission, shall be deemed to be guilty of contempt of such Provost Court or Military Commission, and may be tried and punished for such contempt by such Provost Court or Military Commission summarily or as such Provost Court or Military Commission may otherwise determine.

3.04. Provost Courts and Military Commissions, in addition to the power to impose a fine or confinement, or both such fine and confinement, as otherwise authorized in this General Orders or any other General Orders of the Military Governor of the Territory of Hawaii, upon conviction of a person for a violation of a General Orders of the Military Governor or for any offense that may be tried and determined by such Provost Courts or Military Commissions, shall have power and hereby are authorized and empowered to suspend, cancel, or revoke, or direct or order the suspension, cancellation, or revocation of any license, franchise, or permit of a personal nature issued by the Military Governor or any agent or representative thereof to the person so convicted, and also shall have power and hereby are authorized and empowered, upon conviction of any person as aforesaid, to suspend, cancel, or revoke, or order or direct the suspension, cancellation, or revocation of, any license, permit, or franchise of a personal nature issued to such person so convicted by any federal or territorial officer, department, agent or agency, or by any de-

Respondent's Exhibit No. 16—(Continued)

partment, officer, agent or agency of any municipal corporation or other political subdivision within the Territory of Hawaii.

3.05. In all cases of violation of any provision of any General Orders of the Military Governor, where no other or different provision for fine or confinement or both is provided by such General Orders, the maximum fine or confinement, or both fine and confinement, that a Provost Court may impose, shall be a fine not to exceed five thousand dollars (\$5,000.00), or confinement with or without hard labor not to exceed five (5) years, or both such fine and confinement. The limitations on punishment in any General Orders defining an offense and providing a punishment for such offense shall not be deemed a limitation upon the punishment or sentence that a Military Commission may impose if such offense be tried and determined by a Military Commission rather than by a Provost Court.

3.06. Provost Courts and Military Commissions hereby are authorized and empowered to forfeit or confiscate or to order or direct the forfeiture or confiscation or other disposition of any personal property used, or having for its sole purpose use, in the commission of a violation of any of the provisions of any of the General Orders of the Military Governor now in full force and effect or hereafter enacted or issued.

3.07. Provost Courts hereby are authorized, empowered, and directed, and Military Commissions

Respondent's Exhibit No. 16—(Continued)

hereby are authorized and empowered in their discretion, to admit persons arrested for or charged with an offense triable by such Provost Courts or Military Commissions to cash bail, to fix and accept said bail, provided, however, that such bail shall not be excessive, to determine the conditions subject to which such bail may be or is furnished, and to order and direct forfeiture thereof, and the manner in which the said bail may be forfeited. The police departments of any county, or city and county, within the Territory of Hawaii, when authorized, empowered, and directed to do so by the Military Governor of the Territory of Hawaii, may also fix and accept bail for offenses triable by such Provost Courts. Bail may be set by the Provost Court Commissioner.

3.08. The record of trial in cases before Military Commissions will be substantially similar to that required in a general courts-martial. The record of trial in cases before Provost Courts will be substantially similar to that in the case of a summary courts-martial. The procedure in trials before Military Commissions and Provost Courts will follow so far as it is applicable, the procedure required by general and summary courts-martial respectively. The records of trial in all cases will be forwarded to the Office of the Military Governor.

3.09. All charges brought in the Provost Courts or before Military Commissions shall be preferred

Respondent's Exhibit No. 16—(Continued)

by either the Provost Marshal, Hawaiian Department, the Provost Marshal of a Military district within said Hawaiian Department, or such deputies or assistants of said Provost Marshals and such other persons as first shall be approved by the Military Governor. The Provost Court Commissioner is responsible for the prompt trial of all prisoners in Provost Courts or before Military Commissions, and the Provost Marshals shall be responsible for carrying out the sentence adjudged by the Court or Commission.

4. Military Commissions.

4.01. A Military Commission hereby is appointed to meet at such times and places within the Territory of Hawaii as the President of said Military Commission may direct, for the trial of such persons as may be properly brought before it.

4.02. The following persons shall comprise the detail for said Military Commission:

Major General James A. Woodruff, U.S.A.,
President and Law Member.

Col. John H. Howard, U.S.A.

Lt. Col. Virgil G. Allen, General Staff Corps.

Lt. Col. Ray O. Welch, Ordnance Department.

Lt. Col. Moe D. Baroff, Infantry.

Major Eugene V. Slattery, J.A.G.D., Trial
Judge Advocate.

Lt. Col. Harrison M. Coppin, A.G.D., Defense
Counsel.

Captain Sam B. Thomas, C.M.P., Assistant De-
fense Counsel.

Respondent's Exhibit No. 16—(Continued)

4.93. The defendant in any case tried before said Military Commission may retain and introduce individual counsel of his own selection to represent him in said proceedings.

5. Provost Courts.

5.01. Each of the following persons hereby is appointed as a Provost Court, and assigned to duty as such in addition to his other duties, for the trial of such persons as may properly be brought before the court, at the respective places as hereinafter designated, viz.:

At Hilo, Hawaii, T. H.

Col. Arthur C. Huston, Jr., Inf.

Captain William A. E. King, J.A.G.D.

1st Lt. Woolbridge B. Morton, Jr., F.A.

At Honolulu and Kaneohe, Oahu, T. H.

Col. John H. Howard, U.S.A.

Lt. Col. Moe D. Baroff, Inf.

Major Eugene V. Slattery, J.A.G.D.

✓ Captain John F. Wickhem, J.A.G.D.

At Lihue, Kauai, T. H.

Major Charles A. Fisher, Inf.

At Lanai City, Lanai, T. H.

Arthur W. Carlson.

At Wailuku, Maui, T. H.

Major Merryl G. Shaver, J.A.G.D.

At Kaunakakai, Molokai, T. H.

Major Merryl G. Shaver, J.A.G.D.

Respondent's Exhibit No. 16—(Continued)

At Pamyra Island, T. H.

The Commanding Officer, United States
Naval Air Station.

At Schofield Barracks and Pearl City, Oahu,
T. H.

Lt. Col. Henry DuPree, Inf.

6. Provost Court Commissioner.

6.01. There is hereby created the office of Provost Court Commissioner for the Territory of Hawaii.

6.02. The powers and duties of such Provost Court Commissioner shall be as follows:

To establish a method of process for Provost Courts and Military Commissions and to prepare and recommend rules and regulations of procedure to be promulgated by the Military Governor;

To have charge of and be responsible for, acting under the direction of the Military Governor, the prosecution of all cases before the Provost Courts, and to appear in and prosecute such cases personally or through prosecutors selected from those duly designated and approved pursuant to Paragraph 3.09 of this General Orders No. 2 to prefer charges; provided, however, that the said Provost Court Commissioner may at any time that he elects to do so appear in, take over, and prosecute any case before the Provost Courts at any stage of the proceedings in such case;

To supervise and coordinate the operations and activities of the Provost Courts and Military Com-

Respondent's Exhibit No. 16—(Continued)
missions, including the assignment of cases and determination of questions of jurisdiction;

To coordinate the operations and activities of such Provost Courts and Military Commissions with the activities of the federal and territorial courts, so that a full, complete and expeditious administration of justice may be had and maintained in the Territory of Hawaii during the present emergency;

To have the power of administering oaths or affirmations and to have all other powers necessary or incidental to an efficacious accomplishment of the foregoing duties;

To perform such other duties and functions and exercise such other powers as may from time to time be directed or authorized by the Military Governor.

6.03. Edward N. Sylva, Captain, J.A.G.D., hereby is appointed the Provost Court Commissioner for the Territory of Hawaii and assigned to duty as such Provost Court Commissioner in addition to his other duties.

7. Attempts and Conspiracies to Violate a General Orders.

7.01. An attempt to commit a violation of a General Orders of the Military Governor or any offense triable by a Provost Court or a Military Commission is some act done towards committing and in part execution of the intent to commit the same. No person, firm, corporation, or other association or group of persons, shall attempt to commit a viola-

Respondent's Exhibit No. 16—(Continued)
tion of any provisions of a General Orders of the Military Governor, or attempt to commit any offense triable by a Provost Court or a Military Commission.

7.02. A conspiracy is a willful or malicious combination or mutual undertaking or concerting together of two or more persons to commit a violation of a General Orders of the Military Governor, or any offense triable by a Provost Court or a Military Commission, or instigate any other person thereto, or to do what plainly and directly tends to excite or occasion such a violation. No person shall conspire to violate any provision of a General Orders of the Military Governor, or attempt to commit any offense triable by a Provost Court or a Military Commission.

7.03. Any person knowingly acceding to and joining in a conspiracy after the same is formed, is a party thereto, no less than the one who originally takes part in forming the same. The act of each party to a conspiracy, in pursuance thereof, is the act of all. It shall not be necessary that the act agreed upon shall be done or attempted in pursuance of the conspiracy, as the conspiracy, itself, constitutes the offense.

8. Interference With Military Police and Personnel.

8.01. No person shall commit an assault or an assault and battery on any military police, any member of the shore patrol, or other military or

Respondent's Exhibit No. 16—(Continued)

naval personnel, with intent to resist, prevent, hinder, or obstruct him in the discharge, execution, or performance of his duty as such, nor shall any person wilfully interfere or attempt to interfere with any military police, any member of the shore patrol, or other military or naval personnel in the performance of his official, defined, or required duties as such.

8.02. No person shall commit an assault or an assault and battery on a federal, territorial or municipal police officer with intent to resist, prevent, hinder, or obstruct said police officer in the arrest of a person violating, or charged with a violation of, any General Orders of the Military Governor, or for any offense that may be tried and determined by a Provost Court or Military Commission; nor shall any person wilfully interfere with any such federal, territorial, or municipal police officer in the performance of any duties imposed upon such police officer, or which the said police officer is authorized or empowered to perform by any General Orders of the Military Governor.

8.03. No person, who is or has been made prisoner, or now or hereafter is detained, on conviction or charge of any offense defined by any General Orders of the Military Governor, or tried by a Provost Court or Military Commission, shall escape from imprisonment or detention against the will of the officer or person having him in custody or

Respondent's Exhibit No. 16—(Continued)
against the will or consent of the Military Governor.

8.04. No person shall, after another person has committed an offense constituting a violation of any of the General Orders of the Military Governor, or a violation that may otherwise be tried and determined by a Provost Court or a Military Commission, harbor, conceal, or aid such other person, with knowledge or having good reason to believe that such other person has committed such offense, and with the intent that such other person may avoid or escape from arrest, trial, conviction, or punishment for such offense.

9. False Statements to, or Misusing Authorizations Granted By, Agencies of the Military Governor.

9.01. Definition of "Office of the Military Governor." The term "Office of the Military Governor," as used herein shall include, and hereby is defined to mean, any of the following, to wit:

The Military Governor of the Territory of Hawaii;

The agencies, agents, committees, departments, directors, divisions, employees, sections, and all other personnel, included within the organization of the Office of the Military Governor;

Any representative of the Military Governor not specifically included or mentioned in the subdivision immediately above; and

The successor or successors, if any, of any of

Respondent's Exhibit No. 16—(Continued)
those included or mentioned within the three subdivisions immediately above.

9.02. Definition of "Statement." The term "statement," as used herein, shall include, and hereby is defined to mean, any of the following, to wit: Account, affidavit, oral or written application, bill, claim, deposition, document, form, instrument, letter, oral or written report, oral or written representation, roll, voucher, or any document, instrument, or oral or written statement not specifically mentioned heretofore in this sentence.

9.03. Definition of "Authorization." The term "authorization," as used herein, shall include, and hereby is defined to mean, any approval, certificate, permit, release, license, order, parole, commutation or suspension of sentence, power, privilege, waiver, or other document or instrument, authorized, granted, or issued, or that may be authorized, granted, or issued, by the Office of the Military Governor.

9.04. No person, firm, or corporation, shall, in any matter within the jurisdiction of the Office of the Military Governor, wilfully falsify, or wrongfully or fraudulently conceal to cover up by any trick, scheme, or by any act of omission or commission, any fact concerning said matter. No person, firm, or corporation, shall make or cause to be made, or present or cause to be presented, to the Office of the Military Governor, any false, fictitious, misleading, evasive, or fraudulent state-

Respondent's (Exhibit No. 16—(Continued))

ment, for the purpose of securing, obtaining, or receiving any authorization, payment of money, or any consideration or determination of any matter by the Office of the Military Governor, or for any purpose whatsoever, knowing or having reason to believe such statement to be false, fictitious, misleading, evasive, or fraudulent in whole or in any part, particular, or item thereof, or without having good and substantial reason to believe such statement to be true and correct in whole and in every part, particular, and item thereof.

9.05. No person, firm, or corporation, shall receive or obtain, or cause to be received or obtained, from the said Office of the Military Governor, any authorization for any purpose or use other than that purpose or use for which it was granted, authorized, issued, or intended by the said Office of the Military Governor; and no person, firm, or corporation, who or which shall have received or obtained any authorization from the Office of the Military Governor, shall use or employ, or allow, permit, or cause to be used or employed, the authorization so obtained, for any purpose or use other than that for which it was granted, authorized, issued, or intended by said Office of the Military Governor; and no person, firm, or corporation, who or which shall have obtained any materials, fixtures, goods, wares, merchandise, or any other personal property, by means of or pursuant to any authorization, shall employ, use, or dispose

Respondent's Exhibit No. 16—(Continued)

of, any of the said materials, fixtures, goods, wares, merchandise, or other personal property, for any purpose, use, or disposition, other than that purpose, use, or disposition authorized by the authorization by means of or pursuant to which ownership or possession of said property was obtained or is held by said person, firm, or corporation, unless such person, firm, or corporation is authorized in writing by the Office of the Military Governor to so otherwise use, employ, or dispose of said property.

9.06. No person who shall have taken an oath or affirmation in a trial or any proceeding before a Provost Court or a Military Commission appointed by the Office of the Military Governor of the Territory of Hawaii, or in connection with any affidavit, deposition, or other instrument or document intended to be used or actually used in any such trial or proceeding, shall wilfully swear or affirm falsely in regard to any matter or thing, whether material or immaterial, during such trial or other proceeding, or concerning which, such trial or other proceeding is being had by said Provost Court or said Military Commission or wilfully swear or affirm falsely in regard to any matter or thing, whether material or immaterial, contained in such affidavit, deposition, or other instrument or document.

9.07. Any person, firm, or corporation who or which violates, refuses, fails, or neglects to comply

Respondent's Exhibit No. 16—(Continued)

With any of the provisions of this Title 9 of this General Orders, or who or which evades or attempts to evade any of the provisions of this Title 9, upon conviction thereof, if a natural person, shall be punished by confinement, with or without hard labor, not to exceed five (5) years, or by a fine not to exceed five thousand dollars (\$5,000.00), or by both such confinement and fine, or if a corporation or other than a natural person, by a fine not to exceed five thousand dollars (\$5,000.00).

9.08. The provisions of this Title 9 of this General Orders shall be in addition to any provisions contained in any other General Orders. If any act or acts prohibited by this Title 9 also is or are prohibited by or made a violation or violations of any other General Orders, the offender may be convicted or punished or convicted and punished, for a violation of either this Title 9 or such other General Orders.

10. Power of Civilian Police Officer to Make Arrests.

10.01. All law enforcement officers of the United States, police officers of the Territory of Hawaii, all police officers of all municipal corporations and other political subdivisions within the Territory of Hawaii, and all other public officers or public employees granted power or authority to make arrests by the laws of the United States, by the laws of the Territory of Hawaii, or by the ordinances, rules, or regulations of any municipal corporation or other

Respondent's Exhibit No. 16—(Continued)

political subdivision or department, of or within the Territory of Hawaii, hereby are authorized, empowered, directed, and ordered to forthwith arrest, without warrant of arrest, all persons who, in the presence of such police officers or persons so authorized to arrest, commit any violation of any General Orders of the Military Governor now in full force and effect or hereafter enacted or issued, or any offense triable by a Provost Court or a Military Commission. No cause of action or claim for damages against such police officer or person making such arrest shall accrue in favor of any person arrested as authorized or provided herein, provided, however, that no more force be used by such police officer or person in effecting such arrest than is authorized by law. No person arrested by any of the said law-enforcement officers, police officers, public officers, or public employees, for any violation of any General Orders of the Military Governor now in full force and effect or hereafter enacted or issued, or for any offense triable by a Provost Court or a Military Commission, shall file, commence, institute, maintain, or prosecute any complaint, petition, suit, action, or other proceedings for false arrest, false imprisonment, or for any other cause, reason, or purpose whatsoever, arising out of or because of the fact that such person was arrested by said law-enforcement officers, police officers, public officers, or public employees, for any such violation or offense; nor

Respondent's Exhibit No. 16—(Continued).

shall any person allow or permit any complaint, petition, suit, action, or other proceedings for false arrest, false imprisonment or for any other purpose whatsoever arising out of or because of the fact that such person was arrested by said law-enforcement officers, police officers, public officers, or public employees, for any such violation or offense, to be filed, commenced, instituted, maintained or prosecuted.

11. Definitions of "Person."

11.01. Unless otherwise clearly indicated in the General Orders in which used, the term "person," as used in any General Orders of the Military Governor, shall include, and hereby is defined to mean, any natural person or persons, firms, associations, trusts, corporation or corporations, or any agent, servant, employee, or representative of any of the foregoing.

12. Prosecution of Offenses Under Rescinded General Orders.

12.01. It is expressly provided that no revocation or rescission of General Orders of and by the Military Governor, nor any proclamation issued by the Military Governor, shall operate to invalidate any conviction, or any application of such military orders to persons or activities, and ~~Provest~~ Courts and Military Commissions hereby are expressly authorized and empowered to try and determine any proceeding for violation of a provision of a General Orders of the Military Governor at any time

Respondent's Exhibit No. 16—(Continued)
hereafter, notwithstanding any such rescission or revocation, heretofore or hereafter made, for an offense committed while such General Orders remained in full force and effect.

By order of the Military Governor of the Territory of Hawaii:

THOMAS H. GREEN

Brigadier General, A.U.S.
Executive

10 March 1943

GENERAL ORDERS NO. 3

Blackout

1. Hours of Blackout.
2. Use and Control of Lights During Hours of Blackout.
3. Motor Vehicle Blackout.
4. Traffic During Hours of Blackout.
5. Workers Going to Work in the Morning.
6. Personal Identification During Hours of Blackout.
7. Places of Amusement and Business.
8. Enforcement.

1. Hours of Blackout.

1.01. City and County of Honolulu, District of Maui, District of Kauai, and District of Lanai-Molekai. The hours of blackout for the City and County of Honolulu, the District of Maui, the

Respondent's Exhibit No. 16—(Continued)

District of Kauai, and the District of Lanai-Molokai shall be as set forth in the following schedule for the periods of time indicated:

Dates				Hours	
From		Through		From	To
10 March	1943	14 March	1943	7:30 p.m.	7:00 a.m.
15 March	1943	31 March	1943	7:45 p.m.	6:45 a.m.
1 April	1943	14 April	1943	7:45 p.m.	6:30 a.m.
15 April	1943	30 April	1943	7:45 p.m.	6:15 a.m.
1 May	1943	31 May	1943	8:00 p.m.	6:00 a.m.
1 June	1943	31 July	1943	8:15 p.m.	6:00 a.m.
1 August	1943	31 August	1943	8:00 p.m.	6:15 a.m.
1 September	1943	14 September	1943	7:45 p.m.	6:15 a.m.
15 September	1943	30 September	1943	7:30 p.m.	6:30 a.m.
1 October	1943	14 October	1943	7:15 p.m.	6:30 a.m.
15 October	1943	31 October	1943	7:00 p.m.	6:30 a.m.
1 November	1943	14 November	1943	7:00 p.m.	6:45 a.m.
15 November	1943	14 December	1943	6:45 p.m.	7:00 a.m.
15 December	1943	14 January	1944	7:00 p.m.	7:15 a.m.

1.02. District of Hawaii. The hours of blackout for the District of Hawaii shall be as set forth in the following schedule for the periods of time indicated:

Dates				Hours	
From		Through		From	To
10 March	1943	14 March	1943	7:15 p.m.	6:45 a.m.
15 March	1943	31 March	1943	7:30 p.m.	6:30 a.m.
1 April	1943	14 April	1943	7:30 p.m.	6:15 a.m.
15 April	1943	30 April	1943	7:30 p.m.	6:00 a.m.
1 May	1943	31 May	1943	7:45 p.m.	5:45 a.m.
1 June	1943	31 July	1943	8:00 p.m.	5:45 a.m.
1 August	1943	31 August	1943	7:45 p.m.	6:00 a.m.
1 September	1943	14 September	1943	7:30 p.m.	6:00 a.m.
15 September	1943	30 September	1943	7:15 p.m.	6:15 a.m.
1 October	1943	14 October	1943	7:00 p.m.	6:15 a.m.
15 October	1943	31 October	1943	6:45 p.m.	6:15 a.m.
1 November	1943	14 November	1943	6:45 p.m.	6:30 a.m.
15 November	1943	14 December	1943	6:30 p.m.	6:45 a.m.
15 December	1943	14 January	1944	6:45 p.m.	7:00 a.m.

Respondent's Exhibit No. 16—(Continued)

2. Use and Control of Lights During Hours of Blackout.

2.01. General Restriction. During the hours of blackout, the use of exterior lights and interior lights which are visible on the outside of buildings, houses, or other structures is forbidden, except as is authorized by this General Orders.

2.02. Controlled Illumination. To provide a small amount of controlled illumination in homes and buildings sufficient to permit reasonable facility of movement without necessitating complete blackout of doors, windows and other openings, the use of limited lighting is authorized.

2.03. The following special requirements are prescribed for lamp bulbs used in the controlled lighting authorized in paragraph 2.02 above:

Watts—not more than 25 watts.

Volts—220 to 240 volts to operate on 110 to 120-volt systems.

Base—medium screw.

Bulb—A19 Mazda or equal and internally frosted.

Bulb Coating—opaque except for circular aperture on bulb end.

Circular Aperture—maximum diameter 1 inch.

Opaque Coating Material—resistant to scratching or removal.

2.04. The following regulations are prescribed for the use of these lamp bulbs:

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In small or medium-sized rooms (less than 200 square feet of floor area) only one lamp bulb shall be used per room.

In larger rooms and in corridors not more than one lamp bulb shall be used for each 200 square feet of floor area.

When more than one lamp bulb is used, the lamp bulbs shall be spaced at least 10 feet apart.

Lamp bulbs shall be placed at least 3 feet from any window, exterior door or opening and pointed towards the floor or ceiling.

Lamp bulbs shall not be pointed toward any window, exterior door or other opening or mirror.

These lamp bulbs in no case shall be used on the outside of buildings except on the approval of the Provost Marshal. They will not be used on lanais except on the written approval of the local Air Raid Warden.

2.05. The use of the lamps authorized in this Title is not compulsory, but in the event they are not used, all blackout rules and regulations of the Military Governor shall be strictly observed.

2.06. Piers, Factories and Other Facilities. Any person, firm, or corporation who or which desires to operate and maintain any pier, factory or other facilities during the hours of blackout, shall make application to the Provost Marshal, Hawaiian Department, or the District Provost Marshal for special permission to do so.

2.07. Observation of Maximum Blackout in Piers.

Respondent's Exhibit No. 16—(Continued)

Factories, and Other Facilities. Any person, firm, or corporation who or which has been granted special permission by the Provost Marshal, Hawaiian Department, or the District Provost Marshal to operate and maintain any pier, factory, or other facilities during the hours of blackout, shall observe the maximum blackout consistent with the work to be done.

2.08. Special Blackout Regulations for Piers, Factories, and Other Facilities. In observing the maximum blackout consistent with the work to be done in any pier, factory, or other facilities authorized to be operated and maintained during hours of blackout pursuant to this General Orders, the following rules and regulations shall be complied with, in addition to any other provisions of the General Orders of the Military Governor relating to, or pertaining to, blackout restrictions:

Windows shall be painted or otherwise blacked-out, so as not to emit any light.

Entrances and exits of such structures will be opened only to the extent necessary for the ingress and egress of persons and the movement of materials.

The minimum amount of illumination consistent with the efficient operation of such pier, factory, or other facilities will be used.

Lights which are authorized to be burned in piers, factories, and other facilities during the hours of blackout shall be shaded, insofar as possible,

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to throw the illumination downward only, so as not to be directly visible from the air or outside.

2.09. Private Incineration. No person, firm, or corporation shall destroy, by burning, any refuse, waste, garbage, rubbish, paper, sticks, lumber, or any other matter out-of-doors, nor shall any private incineration be engaged in or allowed out-of-doors, during the hours of blackout or for one hour previous to blackout, except on written authority of the Provost Marshal.

2.10. Carrying Lighted Cigarettes, Cigars and Pipes in the Open During Hours of Blackout. The carrying of lighted cigarettes, cigars, and pipes in the open and the use of matches and lighters in the open for the purpose of lighting cigarettes, cigars, and pipes, during the hours of blackout, except during air raids, air raid alarms and attacks, hereby is permitted.

2.11. Flashlights. Flashlights may be used during the hours of blackout. Except as is otherwise authorized in this paragraph, all flashlights shall be painted or otherwise fixed so as to give off a blue light. Military Police and members of the Civilian Police Department on night duty are authorized to use orange or red cellophane, paint, or other material, so as to give off a red or orange light, on the lens of their flashlights. Air Raid and Fire Wardens on night duty are authorized to use green cellophane, paint, or other materials,

Respondent's Exhibit No. 16—(Continued)
so as to give off a green light, on the lens of their flashlights.

2.12. Excessive Illumination. No person, firm, or corporation shall use, or cause to be used, excessively, any means of illumination during the hours of blackout.

2.13. Extinguishment of Lights During Air Raid and Other Attacks. No person, firm, or corporation shall, in case of an air raid, air raid alarm, attack, or invasion, during the hours of blackout, burn, or cause to be burned, any lights which will be visible out-of-doors, nor shall any person, firm, or corporation rekindle or turn on again such lights until the "All Clear" signal is sounded.

2.14. Businesses and other activities, operating at night in the Kauai District, in such a manner as to require the use of outside lighting, shall comply with the following special blackout regulations:

Plantations requesting permission to engage in night harvesting, must be equipped with operating lights so constructed that no beam of light will be projected upwards. The lights used will be of minimum intensity necessary for operations and safety to personnel involved.

One or more radio receiving sets sealed to Station KTOH, with an operator constantly in attendance, will be continuously tuned to the Station in the immediate vicinity of any night harvesting project in order that all lights may be extinguished

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without delay in the event an air raid or other warning should be broadcast.

Prior to the conducting of any authorized night harvesting operations by plantations, the Plans and Training Officer, District Headquarters, Kalaheo, Kauai, will be advised in order that the proper military and naval authorities may have knowledge of the locations in which lights will be exposed.

All other businesses or activities requesting permission to violate blackout regulations will comply with the above requirements with respect to the amount and type of outside lighting used, and a radio or other approved means of communication will be immediately available for the reception of notices to extinguish lights. Upon receipt of any application for permission to operate in violation of blackout restrictions subject to the above provisions, the District Provost Marshal will inspect the installations under actual night operating conditions and if they are approved, will so notify the Plans and Training Officer at District Headquarters. Following official approval, the applicant will receive from District Headquarters a certificate of authority to operate during blackout hours.

Applications will be considered only from businesses or industries engaged in production of essentials necessary for the war effort or otherwise connected with the National Defense Program.

3. Motor Vehicle Blackout.

3.01. All motor vehicles operating during the

Respondent's Exhibit No. 16—(Continued)
hours of blackout shall conform to the specifications as set forth in the following paragraphs.

3.02. Headlights. Two (2) approved blackout driving headlights shall be used on each motor vehicle, except on motorcycles and motor scooters, which shall have but one (1). Such lamps shall have the necessary color design as described below, with a slot which emits white light for driving. This slot shall be covered by a metal hood. Except as shown in paragraphs 3.07 and 3.11 below, the mounting height of the headlights shall be not less than twenty-four (24) inches nor more than fifty-five (55) inches measured from road level to the bottom of the slot, and in no case higher than the top of the rim of the steering wheel. With the vehicle on level surface and carrying a capacity load, the unit shall be so adjusted that the bottom of the slot is horizontal and so aimed that the visual cut-off up the top of the beam on a vertical screen 10 feet in front of the lamp is at least four (4) inches below the bottom of the horizontal slot in the headlight and in no instances higher than fifty-one (51) inches from the road level. When mounted on motorcycles or motor scooters, the lamp shall be placed on the front as near the center as possible to normal line of operator's vision and far enough forward to eliminate any objectionable reflection of light from any portion of the vehicle.

The upper sector of the headlight shall be painted

Respondent's Exhibit No. 16—(Continued)

a deep red color of brightness of 3 and not to exceed 3.5 foot-lamberts (this light will be visible at a distance at one thousand (1,000) and not over one thousand five hundred (1,500) feet). The thickness ~~of the~~ red band at the center of the vertical axis shall be at least $1\frac{1}{2}$ inches and not to exceed $2\frac{1}{2}$ inches. Paint shall be sprayed on the lens instead of brushing, thus producing an even surface. The other portion of the headlight, with the exception of the white light slot, shall be painted black or lusterless olive drab.

White Light Slot. Except as shown in paragraphs 3.06 to 3.13 below, the white light slot for all motor vehicles shall be one-eighth ($\frac{1}{8}$) inch wide by two (2) inches long and placed at right angles to the vertical axis of the light. The bottom of the slot shall be located at the focal point of the lens which is about three-fourths ($\frac{3}{4}$) inch below the center of the headlight bulb, but in no case shall it be more than one (1) inch below the center of the bulb.

Metal Shield or Hood Over Slot. The metal shield or hood over the white light slot shall be of twenty (20) to twenty-eight (28) gauge sheet metal, extending from side to side of the headlamp and be tightly clamped to the outer rim of the headlamp. At the center of the vertical axis of light, the shield shall have an angle of from forty-five (45) to seventy (70) degrees from the vertical axis at the face of the lens, and sloped downward so that

Respondent's Exhibit No. 16—(Continued)

the outer edge of the shield will be at least $1\frac{3}{4}$ inches and not more than $2\frac{1}{2}$ inches from the lens at the narrowest part of the shield. The outer edge of the shields shall be designed so that a lip protrudes to cover the white light slot, this lip to be one-fourth ($\frac{1}{4}$) inch long, and to be of sufficient width to extend a minimum of one-half ($\frac{1}{2}$) inch over each end of the white light slot. The outer edge of the shield shall be folded back approximately three-eighths ($\frac{3}{8}$) inch to provide stiffness for the shield. The ends of the shield shall be closed and extended sufficiently back into the lamp to provide a clip to hold the shield in position on the headlamp. The inner face of the shield, or face on the lens side, shall be made to fit snugly to the curvature of the lens. Due to various types of headlights now in use on vehicles, the curvature of the shield shall be cut to fit each individual type of lens. The lip of the shield, when in proper position, and when the vehicle is fully loaded, shall give the adjustment prescribed in paragraph 3.02 supra. The shield shall be painted black or lusterless olive drab on the exterior and interior surfaces. Suitable mastic will be applied around the circumference of the lens at the junction of the glass with the retaining rim, and between the inner face of the shield and headlight lens, to properly shield any light at these points.

3.03. Combination Tail and Stop Lamp, Reflectors, and Additional Equipment. One tail, or com-

Respondent's Exhibit No. 16—(Continued)

bination tail and stop, lamp shall be securely mounted on the extreme rear of the vehicle and as near the left side as is practicable with red color as described below and aimed straight to the rear, so that it will be clearly visible to traffic approaching from the rear. Except as specified in paragraph 3.11 below, such lamps shall be mounted not less than twenty (20) inches and not more than fifty (50) inches above the road level. When mounted on motorcycles or motor scooters, this lamp shall be mounted on the rear fender. The tail light shall have a round circle one-half ($\frac{1}{2}$) inch in diameter of red color as prescribed for headlights in paragraph 3.02 above. The remainder of the lens shall be painted black or lusterless olive drab.

An additional tail, or combination tail and stop, lamp as described hereinabove shall be securely mounted on the extreme rear of all motor vehicle combinations one hundred (100) inches and more in width as near the right side as is practicable, and at the same height and alignment as the left combination tail and stop lamp.

Two approved red reflectors may be mounted on all over-sized motor vehicles, as hereinabove described, on the extreme rear, and two approved amber reflectors may be mounted on the extreme front, on each side, as low on the vehicles as practicable and in no case higher than thirty (30) inches above the road level.

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3.04. Instrument and Dashboard Lights, Interior, and Exterior Lights. Instrument and dashboard lights shall be extinguished unless illumination provided therefor is of low intensity and deep red in color. Except as shown in paragraph 3.08 below, all other interior lights in the vehicle shall be extinguished and rendered inoperative. All exterior lights not authorized by this General Orders shall be removed or rendered inoperative.

3.05. Testing of Lights. The intensity of brightness of red used on headlights and tail lights shall be tested by the brightness meter manufactured by the Weston Electric Company by the gauge designed and tested by the Department Engineer, by the Official Headlight Testing Stations operated by the U. S. Army Ordnance Department, or by other methods when approved by the Office of the Military Governor. The size and location of the white light slot, relative to the lip on the metal shield, shall be tested by a suitable screen to insure that the headlights conform with specifications set forth herein (if vehicle is tested with less than capacity load, suitable allowances will be made to insure that the adjustment will meet these specifications when vehicle is loaded to capacity). This adjustment will be made by moving the entire headlamp. The shield will not be bent unless it is impossible to make this adjustment otherwise.

3.06. Lights for Special Vehicles. Such Vehicles as are described in paragraphs 3.07 to 3.13 below

Respondent's Exhibit No. 16—(Continued)
hereby are authorized to have the lights provided for in said paragraphs of this General Orders.

3.07. Trucks of Over 3-Ton Rated Capacity. All lights for trucks of over 3-ton rated capacity will conform to specifications set forth herein, except that the white light slot of the headlights may be increased to three-eighths ($\frac{3}{8}$) inch wide by three (3) inches long.

Vehicles in this category may have lights mounted at a height in excess of fifty-five (55) inches measured from the bottom of the slot to road level provided that visual cut-off up the top of the beam on a vertical screen ten (10) feet in front of lamp is at least four (4) inches below the bottom of the horizontal slot and in no case higher than fifty-three (53) inches from road level when vehicle is carrying a capacity load.

3.08. Busses. All lights for busses will conform to specifications set forth herein except that the white light slot of the headlights may be increased to three-eighths ($\frac{3}{8}$) inch wide by three (3) inches long.

The route markers on all busses will be illuminated with a red light of low intensity.

A maximum of ten (10) interior dome lights, of low intensity may be used in each bus.

3.09. Fire Department Trucks. All lights on Fire Department trucks will conform to specifications set forth herein, except that the white light

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slot of the headlights may be one-half ($\frac{1}{2}$) inch wide by three (3) inches long. -

If needed, Fire Department trucks may use a hooded white spotlight when going to a fire during peaceful times, but when returning from a fire, the headlights prescribed above, will be used. In case of a blitz or other emergency situation, no spotlights will be used. The hood for the white spotlight will encircle the circumference of the light and be at least two (2) inches longer than the diameter of the lens of the spotlight.

3.10. Ambulances, Doctors' Vehicles, and Utility Vehicles. All lights of ambulances and utility vehicles will conform to specifications set forth herein except that the white light slot of the headlights may be three-eighths ($\frac{3}{8}$) inch wide by three (3) inches long.

All lights on motor vehicles owned and operated by or by direction of, or under the supervision of, a physician or surgeon, in the practice of his profession will conform to the specifications set forth herein, except that the white light slot of the headlights may be one-fourth ($\frac{1}{4}$) inch wide by two (2) inches long.

When responding to emergency calls, ambulances and utility vehicles may use a hooded white spotlight during peaceful times, if needed, but when returning to their stations, only the headlights prescribed will be used. In case of a blitz or other similar emergency situation, no spotlight will be

Respondent's Exhibit No. 16—(Continued)
used. The hood will encircle the circumference of the spotlight and will be at least two (2) inches longer than the diameter of the lens of the spotlight.

3.11. Lumber Carriers. Headlights on lumber carriers will conform to specifications set forth herein, with the following exceptions:

White light slot on the headlights may be three-fourths ($\frac{3}{4}$) inch wide by three (3) inches long;

The outer edge of the metal shield will not have the lip prescribed for other vehicles;

With the vehicle on level surface, the headlights shall be so adjusted that the bottom of the slot is horizontal and so aimed that the visual cut-off up the top of the beam of a vertical screen thirty (30) feet in front of lamp is not higher than fifty-three (53) inches from the road level; and

The tail light may be mounted at the same height as the headlights.

Lumber carriers will be allowed to have one hooded white spotlight on the front of the carrier, at the top and one hooded spotlight on the rear left side, near the seat of the operator. In peaceful times, these spotlights may be used when carrying loads of unusual length (over thirty-five (35) feet) when loading and unloading, and when maneuvering the vehicle in unusually difficult places. In case of a blitz or other similar emergency situation, no spotlight will be used. The hood will encircle the circumference of the spotlight and be at least

Respondent's Exhibit No. 16—(Continued)
two (2) inches longer than the diameter of the lens of the spotlight.

3.12. Police Cars. All lights of police cars will conform strictly with specifications set forth herein, except that the white light slot of the headlights may be one-fourth ($\frac{1}{4}$) inch wide by two (2) inches long.

Police cars may be equipped with a hooded white spotlight, which may be used during peaceful times when responding to emergency calls or in other emergency situations. In case of a blitz or other emergency no spotlights will be used. The hood will encircle the circumference of the spotlight and be two (2) inches longer than the diameter of the lens of the spotlight.

3.13. Road Sweepers. All lights on road sweepers will conform strictly with specifications set forth herein, except that the white light slot of the headlights may be one-fourth ($\frac{1}{4}$) inch wide by three (3) inches long.

Road sweepers may be equipped with a hooded spotlight of low power for the purpose of defining the curb line of the road. In case of a blitz or other emergency situation, no spotlight will be used. The hood will encircle the circumference of the spotlight and be two (2) inches longer than the diameter of the lens of the spotlight.

3.14. Any shop, paint shop, or garage which is equipped to paint and install shields and test headlights, so that they meet specifications set forth

Respondent's Exhibit No. 16—(Continued)
herein, are authorized to perform this work. These shops may be inspected regularly by the Department Ordnance Officer, headquarters Hawaiian Department, or his duly authorized representative.

3.15. Upon installation, painting or testing of motor vehicle blackout lights, the shop performing the work will affix a gum sticker to the inside lower right corner of the windshield. The sticker will be not more than one (1) inch wide by $2\frac{1}{2}$ inches long. The face of this sticker will show that the lights have been tested and adjusted. The reverse of the sticker will be filled in to indicate the date, organization, and name of the individual performing the adjustment and test.

3.16. No shop, paint shop, or garage shall install shields or paint headlights without performing the proper test and adjustment to meet specifications set forth herein, nor shall any person tamper with the lens or shields of headlights after they have been inspected and approved.

4. Traffic During Hours of Blackout.

4.01. Enemy Aliens. No enemy alien shall be present on the streets and highways, in parks, and on beaches, either on foot or in vehicles, during the hours of blackout.

4.02. Persons Other Than Enemy Aliens. Except as is hereinafter authorized, no person shall be present on the streets and highways, in parks, and on beaches either on foot or in vehicles, during the hours of blackout after 10:00 P. M.

Respondent's Exhibit No. 16—(Continued)

4.03. Certain Persons Permitted Out-of-Doors After 10:00 P. M. The following classes of persons are excepted from the restrictions of paragraph 4.02 above:

Personnel of the Armed Forces of the United States and allied nations on duty or proceeding to and from duty;

Law enforcement officers on duty or proceeding to and from duty;

Civilian personnel required to be on the streets and highways during such hours because of their employment on defense work, by public utilities, in civilian defense activities, or by the government, or while proceeding directly to and from work;

Doctors on call;

Persons holding Police passes issued since December 7, 1941;

Persons holding special passes issued and approved by the Provost Marshal, Military Police, or Civilian Police; and

Enemy aliens transported in motor vehicles during the hours of blackout by drivers of non-enemy ancestry upon written approval of the Provost Marshal.

4.04. Vehicular and Passenger Traffic During Blackout. Any person except an enemy alien may drive, or ride as a passenger in, a motor vehicle on the streets and highways during blackout hours from the commencement of the period thereof until ten o'clock P. M., but not thereafter during said blackout hours unless duly authorized pursuant

Respondent's Exhibit No: 16—(Continued)
to the General Orders of the Military Governor. Motor vehicles driven pursuant to this paragraph 4.04 during blackout hours shall conform with all other blackout regulations with respect to equipment and manner of operation of such motor vehicles.

4.05. *Twenty Miles Speed Limit.* Except as authorized by the civil or military police, no person shall operate any vehicle at a rate of speed in excess of twenty (20) miles per hour during hours of blackout.

4.06. *No Parking.* No person shall park any vehicle on any public thoroughfare, street, or highway, during the hours of blackout.

4.07. *Removal of Keys From, and Locking Ignition of, Parked Cars.* No person shall allow the keys of any motor vehicle, of which he is the owner or operator, to remain therein, during the hours of blackout, while such vehicle remains properly and lawfully unattended; nor shall any person leave any motor vehicle, of which he is the owner or operator, during the hours of blackout, without first having locked the ignition thereof if possible.

Nothing contained in paragraph 4.07 shall be construed to relieve any person of the restriction imposed by paragraph 4.06 hereof.

4.08. *Taxicabs Allowed on Streets After 5:30 A. M.* All taxicabs, except those owned or operated by enemy aliens, are authorized to be operated and to be on the streets and highways of the Territory of Hawaii after 5:30 A. M. daily.

Respondent's Exhibit No. 16—(Continued)

4.09. No person shall, during the hours of blackout, violate any statute of the Territory of Hawaii or any ordinance, resolution, by-law, regulation, or rule of any city, city and county, county, or other municipal corporation or political subdivision of the Territory of Hawaii, regulating or relating to traffic, now in force or hereinafter in force; and all such traffic violations or offenses occurring during the hours of blackout hereby are made violations or offenses of and punishable under the General Orders of the Military Governor.

5. Workers Going to Work in the Morning.

5.01. Men and women who must leave their homes before the termination of the hours of blackout in order to reach their places of employment between the hours of 7:00 and 8:00 A. M., respectively, are permitted to proceed on the streets and highways of the Territory of Hawaii in motor vehicles or on foot after 5:30 A. M. Such workers shall leave their homes as late as possible.

5.02. Between the hours of 5:30 A. M. and the termination of the hours of blackout, all blackout rules and regulations of the Military Governor shall be observed. Motor vehicles shall proceed with all caution necessary with safety, and shall comply with the maximum speed limit as prescribed by this General Orders.

5.03. No enemy alien shall be present on the streets or highways between the hours of 5:30 A. M. and the termination of the hours of blackout, unless special permission of the Provost Marshal or

Respondent's Exhibit No. 16—(Continued)

his duly authorized representative has first been secured.

5.04. Nothing contained in this Title 5 shall be construed to permit the use of light or other means of illumination during hours of blackout, except in compliance with all blackout rules and regulations of the Military Governor.

5.05. Children under the age of 16 years will not be permitted on the streets and highways between the hours of 5:30 A. M. and the termination of the hours of blackout, unless accompanied by one of their parents or some other adult person, and unless their travel is directly connected with their parents or guardians proceeding to work.

6. Personal Identification During Hours of Blackout.

6.01. All persons required to be on the streets and highways during the hours of blackout after 10:00 P. M. shall carry an identification badge, pass, or letter from their employer evidencing their right to be on the streets, and any such person who may be stopped by the civil or military police during said hours of blackout shall identify himself promptly.

7. Places of Amusement and Business.

7.01. All persons, firms, and corporations who operate and maintain places of business and amusement shall comply with all the blackout rules and regulations of the Military Governor during that period of the hours of blackout that the said places

Respondent's Exhibit No. 16—(Continued)
of business and amusement remain open and are operated.

8. Enforcement.

8.01. Enforcement by Provost Marshal. The Provost Marshal, Hawaiian Department, shall have the power to control the sufficiency and effectiveness of the blackout and shall enforce all rules, regulations, and General Orders of the Military Governor relating to, or pertaining to, blackout in the Territory of Hawaii.

8.02. Penalty for Violations. Any person, firm or corporation, who violates, refuses, fails, or neglects to comply with any of the provisions of this General Orders, or who evades or attempts to evade any of the provisions of this General Orders, upon conviction thereof, shall be punished by confinement, with or without hard labor, not to exceed one (1) year, or by a fine not to exceed one thousand dollars (\$1,000.00), or by both such confinement and fine.

By order of the Military Governor of the Territory of Hawaii:

THOMAS H. GREEN

Brigadier General, A. U. S.
Executive

10 March 1943

GENERAL ORDERS NO. 4

Air Raid

1. Air Raid Alarm System.
2. Vehicular Traffic During Air Raid.
3. Pedestrian Traffic During Air Raid.

Respondent's Exhibit No. 16—(Continued)

4. White Fenders and Red Spot Lights.
5. Places of Public Gathering.
6. Duties and Responsibilities of Air Raid Wardens.
7. Penalty for Violations.

1. Air Raid Alarm System.

1.01. The Department Signal Officer, Headquarters Hawaiian Department, Fort Shafter, T. H., shall have the exclusive control of, and supervision over, the installation, maintenance, and operation of the air raid alarm system established for the Territory of Hawaii.

1.02. No person, other than the Department Signal Officer, or his duly authorized representative or agent, shall operate, tamper with, damage, or in any manner interfere with the operation of, the air raid alarm system established for the Territory of Hawaii.

2. Vehicular Traffic During Air Raid.

2.01. Official Vehicles. When an air raid alarm is sounded, all official vehicles will continue on their missions and will conform to the prescribed speed and traffic regulations.

2.02. Non-official Vehicles. When an air raid alarm is sounded, drivers of non-official vehicles will be governed by the regulations in the following paragraphs, which will permit the movement of such vehicles to their destinations:

If the road is clear, drive to destination but not to an airfield, the waterfront, a military or naval

Respondent's Exhibit No. 16—(Continued)
installation, or to the business district. Do not exceed the prescribed speed limits at any point.

Give the right of way immediately to all official vehicles, civilian or military.

If forced to stop, do Not jam up close to the vehicle ahead. Pull well to the right and Clear the road.

Do Not "block" a street or road intersection.

Do Not park on streets which have been designated as "No Parking" streets.

Obey all orders of the military and civilian police.

In air raid alarms during blackout hours the standard blackout headlights and tail-lights will be turned on while vehicles are in operation.

2.03. Definitions: For the purposes of this General Orders, "official vehicles" shall be defined to mean, and shall include, Army, Navy, Police Department, Fire Department, Medical Services, Civilian Defense Authorities, and Press vehicles, vehicles driven by operating and repair personnel for public utilities, and vehicles operated by members of the Armed Forces proceeding on their missions. All other vehicles are classified "non-official vehicles."

3. Pedestrian Traffic During Air Raid.

3.01. At the time of sounding of an air raid alarm all pedestrians shall seek shelter in available air raid shelters, or shall disperse to their homes, following the instructions of civil and military police. Under no circumstances shall pedestrians, other than those on official duty, proceed to the waterfront or the business district.

Respondent's Exhibit No. 16—(Continued)

4. White Fenders and Red Spot Lights.

4.01. In order to facilitate the movement of motor vehicles of public utilities, the Police Department and Fire Department, and ambulances, on the streets and highways of the Territory of Hawaii during air raids, air raid alarms, attack, invasion, or other emergencies, the lower twelve (12) inches of the left front fender of each vehicle authorized by the Military Governor or his District Representative may be painted white not to exceed a width of twelve (12) inches. Fenders painted white shall be painted on the front and the white part shall not extend to the side or top thereof for a distance greater than two (2) inches. .

4.02. Ambulances and bomb disposal vehicles authorized by the Military Governor or his District Representative may be equipped with a red spot light mounted on top of the vehicle in the center near the forward edge of the top. The spot light will be shielded with a cylindrical shield which shall extend two inches beyond the face of the lens. This light will only be used when such vehicles are moving on emergency calls.

4.03. All agencies identifying their motor vehicles pursuant to paragraphs 4.01 and 4.02 above shall submit a list of such motor vehicles to the Office of the Military Governor on the Island of Oahu or the Representative of the Military Governor in other districts.

4.04. No person, firm, or corporation other than those authorized shall use the identification de-

Respondent's Exhibit No. 16—(Continued)
scribed in paragraphs 4.01 and 4.02 hereof, nor shall the provisions of this Title 4 be construed in such a manner as to include motor vehicles owned by officials, or employees of said public utilities or departments.

5. Places of Public Gathering.

5.01. At the time of sounding of an air raid alarm, all persons present in theatres, auditoriums, or other places of public gathering shall vacate such places and disperse to their homes, public air raid shelters, or other shelters, pursuant to regulations prescribed in this General Orders.

6. Duties and Responsibilities of Air Raid Wardens.

6.01. The duties and responsibilities of Air Raid Wardens shall be as set forth in the following paragraphs.

6.02. Wardens are given the right to patrol the area to which they are assigned at all times. In patrolling the area (except as hereinafter provided) the warden is limited in authority to the area bounded by public vehicular streets.

6.03. Wardens may enter upon private property at any and all times for the purpose of investigating the conditions or any other conditions incidental to the proper protection of the area to which they are assigned. All such investigations shall be made with the consent of the owners or occupants of the property if possible, but if they refuse to give their consent or are absent from the premises the air raid warden may, when it is reasonably necessary to do

Respondent's Exhibit No. 16—(Continued).

so, enter thereon for the purposes hereinabove set forth; provided, however, that when any entry is made upon the premises of another without the consent of the owner or occupant thereof, such entry shall be limited to the grounds of such premises and no dwelling or other building shall be entered without such consent.

6.04. In time of acute emergency or raids, wardens shall advise the public of any areas which they may from time to time determine to be of danger to the public, until such time as proper military or police officials can be notified of the existence of such areas or dangers, and control over them can be assumed by such police or military authorities.

6.05. In the event of an attack wardens are empowered to direct all civilian pedestrians not engaged in defense activity from the streets to places of shelter.

6.06. Wardens are empowered to request the abatement of any fire hazard or condition which would contribute to the danger of the area to which they are assigned, and if such request is not complied with within a reasonable time, they shall report same to the proper authorities for such action as shall be deemed necessary by such authorities.

6.07. Wardens shall have the power, without fear of civil liability, to report any and all acts, conditions or circumstances which appear to them to be inimical to the public good.

6.08. None of the police powers relative to arrest,

Respondent's Exhibit No. 16—(Continued)

the use of force or the directing of vehicular traffic shall be exercised by a warden.

6.09. Wardens are permitted to be on the streets at any hour when their presence thereon is required to carry out their duties as wardens, giving due consideration to the area to which they are assigned and the necessities of their traveling upon the highways.

6.10. Wardens shall assist persons within their jurisdiction to obtain necessary and available requirements for proper protection which may from time to time be distributed to the public.

6.11. Nothing herein contained shall be deemed to give wardens any privileges not accorded other civilian population save and except those required in the conduct and execution of their duties and responsibilities hereinabove defined.

6.12. The duties and responsibilities hereinabove defined refer only to those activities relating to protection and defense against attacks.

6.13. The term "warden" where used herein shall include all members of the Air Raid Warden Division of the Office of Civilian Defense.

7. Penalty for Violations.

7.01. Any person, firm, or corporation who or which violates, or attempts to violate, or evades or attempts to evade, any of the provisions of this General Orders, upon conviction thereof, shall be punished by confinement, with or without hard labor, for a period not to exceed six (6) months, or

Respondent's Exhibit No. 16—(Continued)
by fine not to exceed five hundred dollars (\$500.00),
or by both such confinement and fine.

By order of the Military Governor of the Territory of Hawaii:

THOMAS H. GREEN

Brigadier General, A.U.S.

Executive

10 March 1943

GENERAL ORDERS NO. 5

Civilian Security

1. Evacuation Warning Order.
2. Businessmen's Military Training Corps.
3. Gas Alarms.
4. Penalty for Violations.

1. Evacuation Warning Order.

1.01. This order is issued to further the defense of the Territory of Hawaii, promote internal security, eliminate interference with troop movements and with defense maneuvers, and save civilian lives. This order will be effective forthwith upon order or call of the Military Governor in the event an emergency shall arise requiring the evacuation of the civilian population from the areas of greatest danger.

1.02. Honolulu Urban Area. The Honolulu Urban Area hereby is designated as an evacuation area on the Island of Oahu, Territory of Hawaii, and shall be that area of the City and County of Honolulu makai of and bounded by Middle Street

Respondent's Exhibit No. 16^h—(Continued)

from Kamehameha Highway to King Street; along same to Houghtailing Street; along same to Vineyard Street; along same to Liliha Street; along same to School Street; along same to Lusitana Street; along same to Auwaiolimu Street; along same to Pensacola Street; along same to Wilder Avenue; along same to Punahou Street; along same to Beretania Street; along same to Waialae Avenue; along same to Kapahulu Road; along same to Campbell Avenue; along same to Hayden Street; along same to Eleventh Avenue; along same to Kaimuki Avenue; along same (through Kaimuki Crater) to Twenty-Second Avenue; thence on a direct line to and along Amau Place to Oili Road; thence on a direct line through the intersection of Kealaolu Avenue and Farmers Road to Kapakahi Stream; thence along same to the sea.

1.03. Rural Oahu and Outside Islands. In rural Oahu and in the outside Islands, the evacuation areas shall be such areas as will be designated by the Evacuation Divisions of the Office of Civilian Defense, Oahu Sector Commanders and the District Commanders concerned.

1.04. All women and girls and children under the age of 15 years residing within the evacuation areas hereinbefore described and referred to should prepare to evacuate from said areas and be familiar with and ready to follow the instructions and plans of the Office of Civilian Defense concerning such evacuation. All men not otherwise engaged in essential work shall remain in such area where they

Respondent's Exhibit No. 16—(Continued)

reside or maintain their business establishments to guard against fires, and provide for protection of property. Women and girls employed in essential defense work shall remain at their posts.

1.05. All movement of traffic will be as directed by Military and Civil Police and designated civilian defense personnel under the control of the Provost Marshal.

1.06. The foregoing shall not apply in the event of air raid alarms, but only in cases of extreme emergency, upon further order of the Military Governor, of which notice will be clearly given.

2. Businessmen's Military Training Corps.

2.01. The duties and responsibilities of the Businessmen's Military Training Corps shall be as provided in the following paragraphs.

2.02. The Businessmen's Military Training Corps is a voluntary, self-governing body of citizens on the Island of Oahu, Territory of Hawaii, whose purpose is to assist the Provost Marshal in the execution of his duties whenever called upon to do so and to be ready for any service required when called upon by the Military Governor, as a trained adjunct to the military forces in times of grave emergency.

2.03. All necessary preparation and training of the Corps shall be planned and supervised by the officers of the Businessmen's Military Training Corps. The Provost Marshal, Hawaiian Department, is hereby designated as the military advisor to the Corps and will assist in its training. The

Respondent's Exhibit No. 16—(Continued)

law enforcement agencies under the Provost Marshal will likewise render such assistance as is practicable in the training of the Corps.

2.04. To the extent that it is practicable, arms, ammunition, and other equipment will be furnished by the Army. Appropriate instruction in the employment and care of such arms, ammunition, and equipment will also be supplied by the Army.

2.05. The Businessmen's Military Training Corps is authorized to wear khaki uniforms to which may be affixed the authorized shoulder patch. The insignia of officers, non-commissioned officers and members of the Corps shall be as designated by the Military Governor.

2.06. The Businessmen's Military Training Corps will not in any way assume the duties now assigned to the Military Police, the Civil Police, or to other law enforcement agencies or to Wardens, except when acting as an adjunct to the military forces of the United States in time of grave emergency, or when specifically assigned to law enforcement duty by the Provost Marshal.

3. Gas Alarms.

3.01. Gas alarms, to be given when an enemy gas attack occurs, hereby are divided into two classes: General and Local.

A General alarm shall be given only in the case of a cloud gas attack which is expected to involve a large area. Notice of a General alarm will be issued by all normal methods of communication, and

Respondent's Exhibit No. 16—(Continued)
will be directed to all localities which may be affected.

A Local alarm shall be given in the event the presence of gas is recognized in any place or area. Notice of a Local alarm shall be imparted by means of percussion sounds; such as those produced by bells, triangles, iron rails, and empty cartridge cases struck rapidly and continuously.

3.02. When a gas alarm is given all persons in the area will immediately wear the gas masks issued to them, taking care to carefully adjust them, and then proceed out of the affected area, seeking higher levels, as gas normally finds the lower level. If in an air raid shelter or dugout, all persons shall, immediately after putting on the masks, leave for higher ground. If in a building, all persons shall go to the top floors thereof. The mask shall not be removed until it is certain that gas no longer exists in the area, as even a very small amount is dangerous.

The gas mask will protect the eyes and respiratory tract of the wearer from all chemical agents which will be encountered.

3.03. Signals for sounding gas alarms have been placed throughout the Territory of Hawaii and marked to indicate their use. No person shall sound any such signal at any time, for any purpose, excepting only members of the Police Department, Air Raid Wardens, Businessmen's Training Corps, Hawaiian Territorial Reserve Guard, Teacher Gas

Respondent's Exhibit No. 16—(Continued)
Sentries, and members of the armed forces or other persons specifically authorized to do so.

4. Penalty for Violations

4.01. Any person who violates or evades, or attempts to violate or evade, any of the provisions of this General Orders, upon conviction thereof, shall be punished by confinement, with or without hard labor, for a period not to exceed six (6) months, or by a fine not to exceed Five Hundred Dollars (\$500.00), or by both such confinement and fine.

By order of the Military Governor of the Territory of Hawaii:

THOMAS H. GREEN

Brigadier General, A.U.S.
Executive

10 March 1943

GENERAL ORDERS NO. 6

Aliens

1. Definition of "Enemy Alien" and "Alien Enemy."
2. Policy towards Enemy Aliens.
3. Regulation of Conduct of Enemy Aliens.

1. Definition of "Enemy Alien" and "Alien Enemy."

1.01. The term "enemy alien" or "alien enemy," as used in this General Orders or in any other General Orders of the Military Governor, unless the use thereof in such General Orders clearly indicates otherwise, shall include, and hereby is de-

Respondent's Exhibit No. 16—(Continued)

finer to mean; all natives, citizens, denizens, or subjects of Japan, Germany Italy, Bulgaria, Hungary, Rumania, or of any other nation or government hostile to the United States, who are within the Territory of Hawaii.

2. Policy Towards Enemy Aliens.

2.01. All enemy aliens hereby are enjoined to preserve the peace towards the United States and to refrain from crime against the public safety, and from violating the laws of the United States and Territory of Hawaii, and to refrain from actual hostility or giving information, aid, or comfort to the enemies of the United States, and to comply strictly with the regulations which hereby are, or may be, from time to time promulgated by the President of the United States or the Military Governor of the Territory of Hawaii; and so long as they shall conduct themselves in accordance with law, they shall be undisturbed in the peaceful pursuit of their lives and occupations and be accorded the consideration due to all peaceful and law-abiding persons, except so far as restrictions may be necessary for their own protection and for the safety of the United States. All citizens of the United States are enjoined to preserve the peace and to treat them with all such friendliness as may be compatible with loyalty and allegiance to the United States.

2.02. Enemy aliens hereby are permitted to go about their business and visit friends and relatives throughout the day without special permits or

Respondent's Exhibit No. 16—(Continued)

passes except during the hours of blackout and as may be otherwise limited by this General Orders or special regulations.

2.03. All enemy aliens who fail to conduct themselves as so enjoined, in addition to being liable to restraint, shall be subject to all other penalties prescribed by law and these General Orders.

3. Regulation of Conduct of Enemy Aliens.

3.01. All enemy aliens within the Territory of Hawaii shall comply strictly with the regulations as set forth in the following paragraphs.

3.02. No enemy alien shall commit, aid, or abet any hostile act against the United States, or give information, aid, or comfort to its enemies.

3.03. No enemy alien within the Territory of Hawaii shall write, print, publish, utter, or otherwise make any attack or threats against the Government or Congress of the United States, or any branch thereof, or against the measures or policy of the United States, or against the person or property of any person in the military, naval, or civil service of the United States or of the Territory of Hawaii.

3.04. All enemy aliens shall carry on their person the alien registration card or certificate issued to them at the time of their registration under Section III of the Act of June 28, 1940.

3.05. No enemy alien shall change his place of residence or occupation within the Territory of Hawaii without first having obtained the approval of the Provost Marshal therefor. This requirement

Respondent's Exhibit No. 16 (Continued)

does not eliminate the necessity of complying with the provisions of Section 35 of the Act of June 28, 1940 (54 Stat. 675).

3.06. No enemy alien shall undertake an air flight or ascend into the air in any aircraft, balloon, or flying machine of any sort, whether owned governmentally, commercially, or privately, except upon written authority of the Contact Office, Office of the Assistant Chief of Staff, G-2, Headquarters Hawaiian Department.

3.07. No enemy alien shall have in his actual or constructive possession at any time or place, or use or operate, any of the following listed articles:

Firearms;

Weapons or implements of war or component parts thereof;

Ammunition;

Bombs;

Explosives or material used in the manufacture of explosives;

Short-wave radio receiving sets;

Transmitting sets;

Signal devices;

Codes or ciphers;

Cameras;

Materials and supplies used for the developing and printing of photographs;

Paper, documents or books in which there may be invisible writing; photographs, sketches, pictures, drawings, maps or graphical repre-

Respondent's Exhibit No. 16—(Continued)

sentations of any military or naval installations or equipment, of any arms, ammunition, implements of war, or devices or things used or intended to be used in the combat equipment of the land or naval forces of the United States, or of any military or naval post, camp or station;

Binoculars, field glasses, telescopes, or any other device used or designed for use for making observations at distances.

Any enemy alien having in his possession or under his control any article listed above will forthwith report the possession of such article to the nearest police station where he will receive instructions for the disposition thereof. Dealers, handlers, and brokers having quantities of such articles will submit a complete inventory thereof to such police station where they will receive instructions for the disposition thereof.

3.08. Any article of the classes of property listed above found in the possession of an enemy alien shall be subject to seizure and the possessor shall be subject to trial and punishment.

3.09. Any enemy alien who desires to travel between any of the districts designated by the Office of Civilian Defense on the Island of Kauai, Kauai District, will obtain a pass from the Regional Directors, Office of Civilian Defense, prior to such travel.

Respondent's Exhibit No. 16—(Continued)

By order of the Military Governor of the Territory of Hawaii:

THOMAS H. GREEN

Brigadier General, A.U.S.

Executive

10 March 1943

GENERAL ORDERS NO. 7

Military Areas

1. Purpose.

2. Executive Order No. 9066 of the President of the United States.
3. Hawaiian Department Prescribed as Military Area Pursuant to Executive Order No. 9066.
4. Honolulu Defensive Sea Area.
5. Hawaiian Maritime Control Area.
6. West Loch Area.
7. Iwilei Area.
8. Waterfront Area.
9. Protection of Waterfront Property.
10. Emergency Waterfront Charge.
11. Security Regulations for Vessels in Port.
12. Kokee Restricted Area, Kauai District.
13. Pali Road Restricted Area.
14. Penalty for Violations.

1. Purpose.

1.01. This General Orders is issued in the interests of internal security as additional protection against possible espionage and sabotage.

Respondent's Exhibit No. 16—(Continued)

2. Executive Order No. 9066 of the President of the United States.

2.01. The following Executive Order, being Executive Order No. 9066 of the President of the United States, dated February 19, 1942, is published for the information and guidance of all concerned:

Executive Order

Authorizing the Secretary of War to
Prescribed Military Areas.

Whereas the successful prosecution of the war requires every possible protection against espionage and against sabotage to national-defense material, national-defense premises, and national-defense utilities as defined in Section 4, Act of April 20, 1918, 40 Stat. 533, as amended by the Act of November 30, 1940, 54 Stat. 1220, and the Act of August 21, 1941, 55 Stat. 655 (U.S.C., Title 50, Sec. 104):

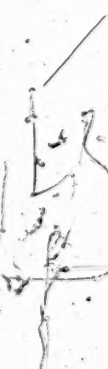
Now, Therefore, by virtue of the authority vested in me as President of the United States, and Commander in Chief of the Army and Navy, I hereby authorize and direct the Secretary of War, and the Military Commanders whom he may from time to time designate, whenever he or any designated Commander deems such action necessary or desirable to prescribe military areas in such places and of such extent as he or the appropriate Military Commander may determine, from which any or all persons may be excluded, and with respect to which, the right of any person to enter, remain in, or leave shall be

Respondent's Exhibit No. 16—(Continued)

subject to whatever restrictions the Secretary of War or the appropriate Military Commander may impose in his discretion. The Secretary of War is hereby authorized to provide for residents of any such area who are excluded therefrom, such transportation, food, shelter, and other accommodations as may be necessary, in the judgment of the Secretary of War or the said Military Commander, and until other arrangements are made, to accomplish the purpose of this order. The designation of military areas in any region or locality shall supersede designations of prohibited and restricted areas by the Attorney General under the Proclamations of December 7 and 8, 1941, and shall supersede the responsibility and authority of the Attorney General under the said Proclamations in respect of such prohibited and restricted areas.

I hereby further authorize and direct the Secretary of War and the said Military Commanders to take such other steps as he or the appropriate Military Commander may deem advisable to enforce compliance with the restrictions applicable to each Military area hereinabove authorized to be designated, including the use of Federal troops and other Federal Agencies, with authority to accept assistance of state and local agencies.

I hereby further authorize and direct all Executive Departments, independent establishments and other Federal Agencies, to assist the Secretary of War or the said Military Commanders in carrying out this Executive Order, including the furnishing



Respondent's Exhibit No. 16—(Continued)
of medical aid, hospitalization, food, clothing, transportation, use of land, shelter, and other supplies, equipment, utilities, facilities, and services.

This order shall not be construed as modifying or limiting in any way the authority heretofore granted under Executive Order No. 8972, dated December 12, 1941, nor shall it be construed as limiting or modifying the duty and responsibility of the Federal Bureau of Investigation, with respect to the investigation of alleged acts of sabotage or the duty and responsibility of the Attorney General and the Department of Justice under the Proclamations of December 7 and 8, 1941, prescribing regulations for the conduct and control of alien enemies, except as such duty and responsibility is superseded by the designation of military areas hereunder.

FRANKLIN D. ROOSEVELT

White House

February 19, 1942

3. Hawaiian Department Prescribed as Military Area Pursuant to Executive Order No. 9066.

301. All concerned hereby are notified that Delos C. Emmons, Lieutenant General, United States Army, by virtue of the authority vested in him by the President of the United States and by the Secretary of War, and by his powers and prerogatives as the Commanding General, Hawaiian Department, and as the Military Governor of the Territory of Hawaii, and as a Military Commander

Respondent's Exhibit No. 16—(Continued)
under Executive Order No. 9066 of the President of the United States, dated February 19, 1942, deeming it necessary to do so, pursuant to an order dated October 16, 1942, did declare, designate, establish, and prescribe the Hawaiian Department, to wit: All the islands belonging to the United States within the area between one hundred fifty (150) degrees west longitude and one hundred sixty (160) degrees east longitude, and between fifteen (15) degrees south latitude and thirty (30) degrees north latitude, a military area within the meaning of said Executive Order No. 9066.

4. Honolulu-Defensive Sea Area.

4.01. The following Executive Order (No. 8987) is published for the information and guidance of all concerned:

Executive Order.

Establishing Honolulu Defensive Sea Area

By virtue of the authority vested in me by section 44 of the Criminal Code as amended (U.S.C. Title 18, Sec. 96), the following-described area is hereby established and reserved, for purposes of national defense, as a naval defensive sea area, to be known as "Honolulu Defensive Sea Area":

All United States territorial waters of Honolulu Harbor, Oahu, Territory of Hawaii, its approaches and tributaries from the contour line of extreme high water as shown on the latest U.S. and G.S. charts to:

A line running south true from the shore at Koko Head, Oahu, along the meridian of Longitude 157°

Respondent's Exhibit No. 16—(Continued)

42° West, to the seaward limit of United States territorial waters;

A line running south true from Ahua Point Lighthouse to the seaward limit of United States territorial waters; and

A line running along the seaward limit of the United States territorial waters between the above-described bearing lines.

A vessel not proceeding under United States Naval or other United States authorized supervision shall not enter or navigate the waters of the Honolulu Defensive Sea Area except during daylight, when good visibility conditions prevail, and then only after specific permission has been obtained. Advance arrangements for entry into or navigation through or within the Honolulu Defensive Sea Area must be made, preferably at a United States Naval District Headquarters in advance of sailing, or by radio or visual communication on approaching the seaward limit of the area. If radio telegraph is used, the call NQO shall be made on a frequency of 500 kcs, and permission to enter the port shall be requested. The name of the vessel, purpose of entry, and name of the master must be given in the request. If visual communications are used, the procedure shall be essentially the same.

A vessel entering or navigating the waters of the Honolulu Defensive Sea Area does so at its own risk.

Even though permission has been obtained, it is incumbent upon a vessel entering the Honolulu De-

Respondent's Exhibit No. 16—(Continued)

defensive Sea Area to obey any further instructions received from the United States Navy, or other United States authority.

A vessel may expect supervision of its movements within the Honolulu Defensive Sea Area, either through surface craft or aircraft. Such controlling surface craft or aircraft will be identified by a prominent display of the Union Jack. The loading or unloading by vessels of oil fuel or other inflammable or explosive materials shall be under the control of the local Naval authority, who shall require such loading or unloading to be accomplished in such manner and at such times as will safeguard the other activities within the Honolulu Defensive Sea Area essential to the national defense.

• These regulations are subject to amplification by the local United States Naval authority as necessary to meet local circumstances and conditions.

When a United States Maritime Control Area is established adjacent to or abutting upon the above-established adjacent defensive sea area, it shall be assumed that permission to enter, and other instructions issued by proper authority, shall apply to any one continuous passage through or within both areas.

Any master of a vessel or other person within the Honolulu Defensive Sea Area who disregards these regulations, or fails to obey an order of United States Naval authority to stop or heave to, or performs any act threatening the efficiency of mines or

Respondent's Exhibit No. 16—(Continued)
other defenses or the safety of navigation, or takes any action inimical to the interests of the United States, may be detained therein by force of arms, and shall be liable to attack by United States armed forces, and liable to prosecution as provided for in section 44 of the Criminal Code as amended (U.S.C., title 18, sec. 96).

All United States Government authorities shall place at the disposal of the Naval authorities their facilities for aiding in the enforcement of these regulations. The Governor of the Territory of Hawaii, the local municipal authorities, and the local civilian defense agencies are called upon to render the local Naval authorities all possible assistance in the enforcement of these regulations.

This order shall not be construed as modifying in any way the proclamation of the Governor of the Territory of Hawaii placing the Territory of Hawaii under martial law.

The Secretary of the Navy is charged with the publication and enforcement of these regulations.

FRANKLIN D. ROOSEVELT

The White House

December 20, 1941.

5. Hawaiian Maritime Control Area.

5.01. The following proclamation is published for the information and guidance of all concerned:

Respondent's Exhibit No. 16—(Continued)

By the President of the United States
of America

A Proclamation

Whereas the United States is now at war, and the establishment of the maritime control area hereinafter described is necessary in the interests of national defense:

Now, Therefore, I, Franklin D. Roosevelt, President of the United States of America, by virtue of the authority vested in me as President of the United States, and as Commander-in-Chief of the Army and Navy of the United States, and in accordance with the principle of self-defense of the Law of Nations, do hereby proclaim and establish the following-described area as the Hawaiian Maritime Control Area, and prescribe the following regulations for the control thereof:

Hawaiian Maritime Control Area

All waters contained within the area delimited by lines connecting successively the following points:

Latitude 22° 31' N.	Longitude 158° W.
Latitude 21° N.	Longitude 155° 30' W.
Latitude 20° 30' N.	Longitude 155° 30' W.
Latitude 20° N.	Longitude 156° 30' W.
Latitude 21° N.	Longitude 159° W.
Latitude 22° N.	Longitude 159° W.
Latitude 22° 30' N.	Longitude 156° W.

Respondent's Exhibit No. 16—(Continued)

Regulations for the Control of Hawaiian Maritime
Control Area

1. A vessel not proceeding under United States Naval or other United States authorized supervision shall not enter or navigate the waters of the Hawaiian Maritime Control Area except during daylight, when good visibility conditions prevail, and then only after specific permission has been obtained. Advance arrangements for entry into or navigation through or within the said Area must be made, preferably by application at a United States Naval District Headquarters in advance of sailing, or by radio or visual communication on approaching the seaward limits of the area. If radio telegraphy is used, the call "NQO." shall be made on a frequency of 500 kes, and permission to enter the port requested. The name of the vessel, purpose of entry, and name of master must be given in the request. If visual communications are used, the procedure shall be essentially the same.

2. Even though permission has been obtained, it is incumbent upon a vessel entering the said Area to obey any further instructions received from the United States Navy, or other United States authority.

3. A vessel may expect supervision of its movements within the said Area, either through surface craft or aircraft. Such controlling surface craft and aircraft shall be identified by a prominent display of the Union Jack.

Respondent's Exhibit No. 16—(Continued)

4. These regulations may be supplemented by regulations of the local United States naval authority as necessary to meet local circumstances and conditions.

5. Should any vessel or person within the said area disregard these regulations or regulations issued pursuant hereto, or fail to obey an order of the United States naval authority, or perform any act threatening the efficiency of mine or other defenses, or take any action therein inimical to the defense of the United States, such vessel or person may be subjected to the force necessary to require compliance, and may be liable to detention or arrest, or penalties or forfeiture, in accordance with law, the law applicable to violations committed on the high seas being international law.

The Secretary of the Navy is charged with enforcement of these regulations.

In Witness Whereof, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

Done at the City of Washington, this 27th day of December in the year of our Lord nineteen hundred and forty-one, and of the Independence of the United States of America the one hundred and sixty-sixth.

[Seal] /s/ FRANKLIN D. ROOSEVELT

By the President:

/s/ CORDELL HULL

Secretary of State.

Respondent's Exhibit No. 16—(Continued)

6. West Loch Area.

6.01. There is hereby created and established in the interests of military necessity and public safety, a restricted military area, consisting of the general area adjacent to and immediately west of West Loch, Pearl Harbor, Island of Oahu, Territory of Hawaii, in accordance with boundary lines as now established and determined. Said area shall be evacuated of all persons except those to whom passes to return have been issued. Such evacuation shall be conducted under the supervision of the Provost Marshal, Hawaiian Department.

7. Iwilei Area.

7.01. There is hereby created and established, in the interests of military necessity and public safety, a restricted military area on the Island of Oahu, consisting of the Iwilei Area, bounded as follows:

Kapalama Drainage Canal from Kapalama Basin to Dillingham Boulevard; thence along the south side of Dillingham Boulevard to a point about 200 feet west of King Street; thence along the easterly (mauka) boundary of that portion of Oahu Railway and Land Company land which is used for railway yards, shops, offices, and station to a point on King Street about 320 feet north of Iwilei Road; thence along King Street to Iwilei Road; thence along the north side of Iwilei Road to Queen Street; thence along the west side of Queen Street to Pier 15, inclusive; thence along the harbor line in a westerly direction to the channel connecting Honolulu Harbor with Kapalama Basin; thence along said channel

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to Kapalama Basin; thence along the easterly boundary of Kapalama Basin to the Kapalama Drainage Canal.

Said area shall be evacuated of all persons except those to whom passes to return have been issued. Such evacuation shall be conducted under the supervision of the Provost Marshal, Hawaiian Department.

8. Waterfront Area.

8.01. There is hereby created and established, in the interests of military necessity and public safety, a restricted military area, consisting of the waterfront area of the City and County of Honolulu, Territory of Hawaii, described as follows:

The waterfront area of Honolulu makai of the following Described Line: Commencing at the ewa mauka corner of Ala Moana and South Streets; thence ewa on Ala Moana Street to an iron fence on the ewa side of premises occupied by the Contractors, Pacific Naval Air Bases; thence along said fence to the makai side of Punchbowl Street; thence to the makai side of Halekauwila Street; thence ewa on Halekauwila Street to the ewa side of Fort Street; thence mauka on Fort Street to the makai side of North Queen Street; thence along Queen Street to the waikiki side of Awa Street; thence along Awa Street to the mauka end of Pier 18; thence makai along ewa side of Pier 18 to Pier 19; thence ewa along mauka side of buildings of Pier 19 and across railroad spur to a point

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ten (10) feet ewa of said railroad spur; thence mauka parallel to railroad spur to makai side of pavement; thence ewa along pavement to Pier 24; thence mauka in front of Oahu Railway and Land Company to Pacific Street; thence along the makai side of Pacific Street; thence mauka across Pacific Street to Honolulu Gas Company, Ltd.; thence around the Honolulu Gas Company, Ltd.'s property; thence along the ewa side of Union Oil Company of California's plant to Hart Road; thence ewa on mauka side of Hart Road to the Kapalama Drainage Canal.

8.02. Entry into the above Restricted Area shall be limited to those individuals and vehicles properly identified and employed therein or on business pertaining to the United States, Territorial and Municipal governments, and to properly identified passengers of Inter-Island and Trans-Pacific ships. All persons regularly required to enter this area shall be furnished with a C. I. B. photographic badge and the Provost Marshal Waterfront pass or other photographic badge or pass approved by the Military Governor.

8.03. No person shall enter, be in, or remain in, said Waterfront Area or any part or portion thereof unless duly authorized to do so by the Military Governor of the Territory of Hawaii, his duly authorized agents or representatives, or by other competent authority.

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8.04. The employment of enemy aliens in the Restricted Area will be permitted only under conditions prescribed by the Provost Marshal, Hawaiian Department.

8.05. Parking of motor vehicles at any place within the Restricted Area, is prohibited, except as may be authorized by the Provost Marshal, Hawaiian Department.

8.06. The military authorities will erect such fences and barricades along the Described Line or anywhere within the Restricted Area as deemed proper for security and military necessity. Such other restrictions as shall be required for the Restricted Area shall be as designated from time to time by the Provost Marshal.

9. Protection of Waterfront Property.

9.01. Smoking by any person on or in any dock, wharf, tank farm, or warehouse located thereon in the Territory of Hawaii is prohibited, except in such places as may be designated for this purpose by the Captain of the Port.

9.02. No fire shall be built on or in any dock, wharf, tank farm, or warehouse located thereon in the Territory of Hawaii, without the written consent of the District Captain of the Port Officer or the Captain of the Port in which such dock, wharf, tank farm, or warehouse is located.

9.03. Nothing contained in this General Orders shall be construed as modifying or suspending any existing Federal or Territorial statute or any Proclamation or Executive Order of the President of the

Respondent's Exhibit No. 16.—(Continued)
United States, or any General Orders of the Military Governor.

10. Emergency Waterfront Charge.

10.01 Castle & Cooke Terminals, Limited, hereby is authorized and directed to perform such duties with respect to the guarding of vessels, cargo and piers in Honolulu Harbor as it may be directed to do by the Director of Cargo and Passenger Control, Office of the Military Governor. Payment for such services as Castle & Cooke Terminals, Limited, performs pursuant to this Title 10 shall be made from the Emergency Waterfront Fund upon presentation of certified bills approved by the Director of Cargo and Passenger Control, Office of the Military Governor.

10.02. All vessels except harbor craft (including tugs and barges) based at Honolulu, berthed in Honolulu Harbor at any pier not under lease to or owned by the Federal Government, shall be charged and shall pay to the Emergency Waterfront Fund an Emergency Waterfront Charge. Effective forthwith, the Emergency Waterfront Charge shall be one cent (\$0.01) per net registered ton for each half-day or fraction thereof that the ship is at the dock. The periods from Noon to Midnight and from Midnight to Noon shall each constitute a half-day.

10.03. The Board of Harbor Commissioners of the Territory of Hawaii is hereby designated as the fiscal agent of the Military Governor for the purpose of administering the Emergency Water-

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front Fund. All charges under the Emergency Waterfront Charge shall be made and collected by said Board and all receipts therefrom shall be deposited in the Bishop National Bank of Hawaii, at Honolulu, T. H., to the credit of the Emergency Waterfront Fund O.M.G. Disbursements shall be made on checks signed by the administrative officer of the Board of Harbor Commissioners and countersigned by the Finance Officer in the Office of the Military Governor.

10.04. Such funds as may be available in the Emergency Waterfront Fund shall be used to pay Castle & Cooke Terminals, Limited, for emergency patrol work and also to pay for such other expenses incidental to the guarding of vessels, cargoes, and piers in Honolulu Harbor as may be authorized and approved by the Director of Cargo and Passenger Control, Office of the Military Governor.

11. Security Regulations for Vessels in Port.

11.01. The following regulations quoted from Title 33, Chapter I, Part 6, Subpart E, approved by the President on 31 December 1942, issued pursuant to the authority contained in section 1, Title II, of the Espionage Act approved June 15, 1917, 40 Stat. 220 (U.S.C. title 50, sec. 191), as amended by the Act of November 15, 1941 (55 Stat. 763), and by virtue of the Proclamation and Executive Order issued June 27, 1940 (5 F.R. 2419), and November 1, 1941 (6 F.R. 5581), and as quoted in Port Security Order No. 1-43, 20 January 1943, respec-

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tively, are published for the information and guidance of, and compliance by, all concerned:

“Sec. 6.331. When Guards Shall Be Used:

On all vessels guards shall be employed in accordance with the following schedule in addition to the crew requirements set forth under the section on manning:

- (c) Fire Guards: On self propelled vessels of 1000 gross tons or over when under repair a fire guard shall be maintained in each compartment or place in which there is in use portable apparatus such as for welding, burning, and riveting, or in which sparks or sufficient heat to cause combustion may be transmitted if such space or adjacent spaces contain combustible materials likely to become ignited, from the time such work is started until after it is completed.

✓ “Sec. 6.332. How Guards Are Provided: The master, vessel owner, operator, and agent shall provide all guards required by the regulations in this subpart, except where such guards are provided by military authority.

“Sec. 6.380. Responsibility for Compliance by Crew and Others: The master, owner, operator, and agent of the vessel shall require strict compliance by the members of the crew, guards, and others with the regulations contained in this subpart and shall instruct them therein. Violations of the regulations contained in this

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subpart shall be reported to the Captain of the Port.

"Sec. 6.381. Return to Ship in Emergency: When officers and men are ashore and a state of emergency is announced in the port, they shall endeavor to proceed with all possible speed to their ship.

"Sec. 6.382. Discussion of Ship's Business: Officers, crew members, and others shall not discuss ship's business or inform anyone of any anticipated movement of the vessel except as required in the line of duty and then only with persons having proper credentials. Ship's business shall not be discussed within the hearing of those not officially involved.

"Sec. 6.383. Possession of Binoculars and Telescopes: Binoculars and telescopes on vessels shall be in the possession of the master, officers and lookouts only.

"Sec. 6.384. Sailing Time: In no case shall a sailing time be posted or announced and every effort shall be made to keep information in relation thereto and to the future movements of the vessel secret.

"Sec. 6.385. Provision for Smoking: The master shall post a notice in a conspicuous place stating where smoking shall and shall not be permitted aboard. In no case shall smoking be permitted:

- (a) On weather decks when moored to a dock, pier, wharf, or other waterfront facility.

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- (b) When loading or discharging explosives.
- (c) In cargo spaces.
- (d) When gas freeing ship's tanks or when loading Grade A, B or C liquid inflammable cargo in bulk, except that the master may permit smoking in lounge and mess rooms, in fire rooms when boiler fires are lighted, and in engine rooms when machinery is in operation."

11.02. The regulations set forth in this Title 11, and amendments thereto, shall be enforced by the Captains of the Port.

12. Kokee Restricted Area, Kauai District.

12.01. There is hereby created and established, in the interest of military necessity, a restricted military area consisting of the general area commonly known as the Kokee Area, on the Island of Kauai, Kauai District.

12.02. Civilians will be permitted to enter this Kokee Restricted Area and occupy summer residences therein only after having procured a pass from the Provost Marshal by applying at the Office of Civilian Affairs, Court House, Lihue, Kauai.

12.03. Passes will be issued to the owner or lessee of the property to be occupied, and to each member of the family, guests, servants, employees and to any workmen who may be engaged to perform contract labor about the premises. The name of the owner or lessee will appear on all passes issued, and he or she will be directly responsible

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for the observance of all regulations by any person issued a pass in the name of said owner or lessee.

12.04. Any violation of these regulations by the holder of a pass will subject all members of the household to the penalty of having their passes revoked.

12.05. Tradesmen and others having legitimate business in the Kokee area or in the vicinity of the restricted area may be issued passes. In the event of a violation of any regulation governing this area, the pass privilege of the tradesman or the concern whose representative was guilty of the violation will be revoked.

12.06. The maximum speed for all vehicles, using the Kokee road North of the Belt Road junction, is 25 M.P.H.

12.07. A copy of this Title 12 shall be conspicuously posted in each occupied house in the Kokee area.

12.08. Strict compliance with all General Orders such as blackout and curfew will be observed. The use of trails and roads in the general vicinity of the CCC Camp is prohibited North and West of the boundary line between the districts of Waimea and Hanalei. The restricted area has been designated as a military reservation and is clearly marked by signs and fences.

12.09. Persons trespassing on the military reservation shall be subject to a fine of not less than Fifty Dollars (\$50.00) nor more than Five Hundred Dollars (\$500.00), or by imprisonment for not

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more than one (1) year, or both fine and imprisonment.

13. Pali Road Restricted Area.

13.01. Pali Road Restricted Area hereby is designated and declared to be a military area and shall be that area on, adjacent to, or in the vicinity of the Pali Road on the Island of Oahu, Territory of Hawaii, from a point on the Honolulu side of said Pali Road one-quarter of a mile from the summit thereof to a point on the Kaneohe side where said Pali Road intersects Highway No. 1.

13.02. No person shall photograph, or take pictures from, on, in, or of, the Pali Road Restricted Area, or any portion thereof.

14. Penalty for Violations.

14.01. Any person who violates or evades, or attempts to violate or evade, any of the provisions of paragraphs 11.01 and 11.02, or any other provision of this General Orders, upon conviction thereof, shall be punished by confinement, with or without hard labor, for a period not to exceed one (1) year, or by a fine not to exceed One Thousand Dollars (\$1000.00), or by both such confinement and fine.

By order of the Military Governor of the Territory of Hawaii:

THOMAS H. GREEN

Brigadier General, A.U.S.

Executive

Respondent's Exhibit No. 16—(Continued)

10 March 1943

GENERAL ORDERS No. 8

Identification and Registration

1. Purpose.
2. Central Identification Bureau.
3. Identification Passes for Entry to Military Establishments.
4. Solicitors.
5. Explosives and other Dangerous Materials.
6. Obsolete Passes.
7. Notice of Change of Address.
8. Registration of Laboratories.
9. Registration of Persons with Service in Armed Forces of Foreign Governments.
10. Wearing of Khaki Clothing by Civilians.
11. Brassards (Arm Bands) for Navy and Marine Officers.
12. Office of the Military Governor Brassard (Arm Band).
13. Penalty for Violations.

1. Purpose.

1.01. This General Orders is issued in the interests of internal security as additional protection against possible espionage and sabotage.

2. Central Identification Bureau.

2.01. The establishment of the Central Identification Bureau also known as C.I.B., as a bureau of the Office of the Military Governor, hereby is confirmed.

2.02. The function of the Central Identification

Respondent's Exhibit No. 16—(Continued)

Bureau shall be the issuance of means of identification to persons who are required to have such identification in order to gain access to military and naval reservations and other areas, and for such other purposes as may be required by Orders of the Military Governor.

2.03. Any applicant desiring a C.I.B. badge or other means of identification issued by it shall prepare the application form and such other data as may be required from time to time by the Bureau and personally present and submit the same at the office of said Bureau. The employer shall assist and supervise the preparation of such application and data for employees desiring such means of identification.

2.04. Any person receiving such means of identification shall, within forty-eight hours after expiration of the period of time for which it was issued, or within forty-eight hours after termination of the employment recited in such application as the basis for issuance thereof, deliver or mail such means of identification to the Central Identification Bureau.

2.05. No person shall copy or duplicate, or attempt to copy or duplicate, any such means of identification, or any part thereof, issued by said Bureau; nor shall any person secure, or attempt to secure, or aid or abet another person in securing, or attempting to secure, such means of identification under false pretenses; nor shall any person take, carry, remove, or send, or attempt to so do, any such means of identification from the Territory

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of Hawaii except seafaring persons who have been issued Captain of the Port badges as sanctioned by the Coast Guard; nor shall any person commit, or attempt to commit, a fraudulent use of any such means of identification; nor shall any person commit, or attempt to commit, a fraudulent entry to any military or naval reservation or other restricted military or naval area by use of such means of identification.

3. Identification Passes for Entry to Military Establishments.

3.01. Effective 15 March 1943, the Central Identification Bureau will be the authorized agency to issue passes to civilian personnel for entrance to military establishments, posts, air fields, and restricted areas. Identification passes will be issued by the C.I.B. only with the recorded prior approval of the commander responsible for security of the post or other installation concerned.

3.02. Identification passes will be issued according to the provisions of the following paragraphs.

3.03. The Standard Identification Pass. The Standard Identification Pass will consist of a badge, bearing the name and photograph of the person to whom issued, his duty or occupation, the establishment or area to which entry is authorized, a recorded serial number, and the impression seal of the Central Identification Bureau.

3.04. The "Special" Identification Pass. In all cases where the standard identification pass will not suffice, either because entry to more than one establishment or area is authorized, because the scope of

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authorized activities cannot be described on the standard identification pass, or because employment is of a temporary nature and may be at varying locations, a "Special" identification pass will be issued. The "Special" pass will be similar to the standard pass in all respects, except that on the "Special" pass a red band bearing the word "Special" will be substituted for the name of the restricted areas or establishments to which entry is authorized. The "Special" pass must be accompanied by an identification card pass bearing the same serial number as the "Special" pass, setting forth the restricted areas or establishments to which entry is authorized and the scope of the bearer's activities. The card pass, as well as the "Special" badge, will be required as authority for admittance to the designated areas.

3.05. Employers desiring passes for employees will submit a list of such employees to the Commanding Officer of each military establishment or restricted area to which entry is desired, stating in each case the name of the employee, the duty performed, and the installations or area to which admittance is desired. The Commanding Officer, if he approves, will refer the request to the C.I.B. where the history of each individual will be examined. The required form of badge will be issued by the C.I.B. to those individuals whose credentials are acceptable.

3.06. Commanding Officers of military establishments may at any time revoke the authority to enter. In such event, the C.I.B. will recall the badge,

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or "Special" badge and identification card, and if necessary will issue a new identification card, omitting the post, establishment, or area to which authority to enter has been revoked.

3.07. Where duties require enlisted men to enter regularly one or more restricted areas to which the soldier's uniform and identification tags are insufficient identification Commanding Officers will secure C.I.B. passes as prescribed above for civilians.

3.08. No passes other than the service identification card will be required of commissioned officers (of the Armed Services), except where a special pass for certain installations is prescribed by the Department Commander.

4. Solicitors.

4.01. The term "solicitor," as used in this Title 4, shall include, and hereby is defined to mean, any person who, within the Territory of Hawaii, goes from house to house, or from place to place, selling, soliciting, or taking orders for, or offering to sell or take orders for, farm products, goods, wares, merchandise, or memberships, shares, certificates, or similar interests in any group, club, lodge, or society. Insurance salesmen, persons who go from house to house or place to place to deliver newspapers or milk or to collect garbage or to pick up or deliver property of any kind, and agents, employees, or representatives of privately owned public utilities, who go from house to house or place to place, regularly or occasionally during the course of their employment, shall be deemed to be solicitors within the meaning of the provisions of this Title. It shall

Respondent's Exhibit No. 16—(Continued)

be no defense in the prosecution of any person charged with a violation of any of the provisions of this General Orders that such person did not demand, solicit, accept, or receive payment or deposit of money in connection with any of the aforesaid acts or matters: nor will it be necessary for the accuser or prosecutor to allege or prove, or for the Court to find, in any such prosecution that any such person so charged was regularly engaged or employed as a solicitor, but it will be sufficient to establish that such person is a solicitor within the meaning of this General Orders if such person irregularly or occasionally does any of the acts mentioned in the first two sentences of this paragraph.

4.02. No person shall act as, or do an act as, or be, a solicitor within the Territory of Hawaii after March 15, 1943, without first having obtained a solicitor's identification card from the Central Identification Bureau of the Office of the Military Governor, at Honolulu, T. H. Solicitors shall retain their solicitor's identification card on their person at all times and exhibit such card upon demand by any municipal, territorial, or federal police officer, or upon demand by any duly authorized member of the United States Naval Intelligence or Military Intelligence Division. No person other than the person to whom such solicitor's identification card duly has been issued by the said Central Identification Bureau, shall possess or use in any manner, said solicitor's identification card.

4.03. None of the provisions of Paragraphs 4.01

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and 4.02 above shall be applicable to any person under sixteen (16) years of age, nor to any municipal, territorial, or federal employees.

5. Explosives.

5.01. Persons, corporations, partnerships and other associations handling explosives on wharves or harbor installations or transporting such explosives from place to place, will obtain for each person engaged in such transportation a special identification card from the Central Identification Bureau.

5.02. The identification card will be issued to the employer for distribution to the employee and will be returned to the Central Identification Bureau upon the separation of the employee from the services of the employer to whom it was issued. Absence from employment for three consecutive days without leave of absence will be equivalent to separation. Upon separation from employment the identification card becomes null and void and the person covered by it is not thereafter authorized to use it for any purpose. If the employee is re-employed, the old identification card must be surrendered to the Central Identification Bureau and a new one must be obtained. The employer, or his agent, is charged with obtaining the identification card from any employee who is separated from the employer's services and, in the event such identification card is not recovered, a report of this fact will be submitted to the Central Identification Bu-

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reau within seven (7) days after the date of separation from service.

5.63. In the event that explosives are to be transported in vehicles on the roads and highways of the Territory of Hawaii they will be covered by tarpaulin or other similar type of covering and securely lashed. There will be placed in a conspicuous location on the front and rear of each vehicle loaded with explosives moving singly on roads and highways, a red placard or sign with the words "Danger—Explosives" painted in white letters not less than five (5) inches in height. Two or more vehicles carrying explosives and traveling in convoy will have a similar sign on the front of the leading vehicle and on the rear of the last vehicle and will be accompanied by military police escort. On the Island of Oahu, call 1211, local 97, for escorts. On other islands, call the District Provost Marshal for escorts.

5.04. In the event explosives are to be handled in or transported from, to or through a military or naval installation (restricted areas and zones included) the written approval of the Commanding Officer or the Officer in Charge of that installation must be obtained prior to any movement. In the case of the restricted waterfront area as defined and delimited by General Orders No. 7, the written approval of the Captain of the Port, Honolulu, or other officer designated by him, shall be obtained prior to any explosive being handled in or transported from, to, or through such restricted area.

Respondent's Exhibit No. 16—(Continued).

5.05. Nothing herein contained shall be deemed to limit the jurisdiction granted by statute, executive order, or regulation to any Federal agency over harbors, wharves, docks or other harbor facilities and activities therein. Any person transporting explosives shall comply fully with the Federal Explosives Act of December 26, 1941, (Public Law 381 77th Cong.) and the regulations issued pursuant thereto, and all Territorial statutes and Municipal Ordinances with reference thereto.

5.06. In addition to the above requirements of this Title 5, the following regulation shall be applicable to civilians and government agencies in the Kauai District having explosives on hand:

Commencing with the effective date of this General Orders any changes in inventories of all explosives on hand will be reported to the District Engineer for the Office of Civilian Affairs within 24 hours, showing location of explosives, quantities, types and strength.

Shipments into the County and District of Kauai will be reported by the Army Transport Service to the District Engineer upon arrival.

No explosives may be shipped out of the Island without the prior approval of the District Engineer.

The District Engineer will maintain an inventory of all explosives on the Island, will make frequent inspections of all explosive dumps, will verify reports and will check on the condition of the explosives and storage facilities.

6. Obsolete Passes.

6.01. Every person to whom a pass or an identi-

Respondent's Exhibit No. 16—(Continued)

fication badge has been issued for entry to a military or naval reservation, or a national defense project, who is not at present employed on the military or naval reservation, or national defense project, for which such pass or badge was issued, and every person whose pass to enter any such reservation or project has expired, or which has been declared cancelled or has just been recalled by the issuing authority and who now has such pass or badge in his possession, shall forthwith deliver or mail such pass or badge to the Central Identification Bureau, Honolulu, T. H.

6.02. No person who is at present not employed on the military or naval reservation, or national defense project, for which he was issued a pass or an identification badge, and no person whose pass to enter a military or naval reservation has expired, or has been declared cancelled or has been recalled by the issuing authority, shall use such obsolete pass or badge to gain entry to any such reservation or project by the use of such pass or badge.

6.03. Any person who shall lose any badge or pass mentioned in this General Orders, or whose badge or pass has been destroyed, mutilated, or defaced, shall report said loss, destruction, or mutilation in person to the Central Identification Bureau, within forty-eight (48) hours thereafter.

7. Notice of Change of Address.

7.01. The term "residence," as used in Paragraphs 7.02 and 7.03 below, shall include, and hereby is defined to mean, the house, cottage, apartment, or other place of residence or abode, being cur-

Respondent's Exhibit No. 16—(Continued)

rently and immediately used and occupied within the Territory of Hawaii by the person or persons to whom reference is made in said Paragraphs 7.02 and 7.03. It is not intended that the term "residence," as used in said Paragraphs 7.02 and 7.03 shall refer to or include a residence or domicile without the Territory of Hawaii, nor the permanent residence or domicile of such person within the Territory of Hawaii unless such permanent residence or domicile is also the place of abode being currently and immediately used and occupied within the Territory of Hawaii by such person and in which such person actually lives.

7.02. Any person within the Territory of Hawaii, who, heretofore has furnished, or hereafter shall furnish, a Personal History Declaration to the Central Identification Bureau of the Office of the Military Governor or to any office, officer, agency, agent, or department of the United States Navy or of the Army of the United States, or to any office, officer, agency, agent, or department of the United States, and who subsequent to the date hereof and after having so furnished such Personal History Declaration, shall change his or her residence within the Territory of Hawaii, shall, within seventy-two (72) hours after so changing such residence, notify the said Central Identification Bureau in writing, or in person, of the fact that such person has changed such residence and of the residence address which said person has acquired or obtained by reason of said change of residence, and, if a telephone is available to such person at the

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said residence address so acquired by such change, the number thereof.

7.03. Any person, who prior to the date hereof, shall have so furnished such a Personal History Declaration and who has heretofore changed his or her residence, and failed, neglected, or refused to furnish his or her current residence address to said Central Identification Bureau, shall not later than April 1, 1943, furnish said current residence address and telephone number, if any, in writing or in person, to said Central Identification Bureau.

8. Registration of Laboratories.

8.01. The owner or owners, director or directors, proprietor or proprietors, or other person or persons in charge of each laboratory in the Territory of Hawaii, whether such laboratory be a public or private laboratory, or a commercial, research, or educational laboratory, or a laboratory of a kind or nature other than that specifically mentioned herein, shall forthwith register such laboratory either by mail or in person, with the Office of the Military Governor of the Territory of Hawaii at Honolulu, T. H., by furnishing said office with a signed written statement containing the following pertinent information relative to such laboratory, to wit:

Name of laboratory;

Address of laboratory;

Ownership;

Type of work done in laboratory;

A list of all personnel, including the director, stating the name, age, address, birthplace, nationality, and type of work done by each in the

Respondent's Exhibit No. 16—(Continued)

laboratory. This list shall include similar information in the case of all personnel employed in, or associated with the laboratory within the past five years, and shall give their present addresses if known.

8.02. A laboratory, for the purposes of this General Orders shall be defined to mean, and shall include, any institution, establishment, business, place, or agency, engaged in chemical, bacteriological, or pathological investigation as an aid to industry, medical practice, experimentation, or teaching.

8.03. Laboratories heretofore registered under prior General Orders of the Military Governor are hereby expressly exempted from the requirement as to registration contained in the provisions of Paragraph 8.01 above.

8.04. Access will be afforded at all times to the Military Governor or his representative for inspection of all laboratories required to be registered by the provisions of this General Orders.

8.05. Any change in the status or personnel of a laboratory, or in any information furnished the Office of the Military Governor pursuant to this Title 8, shall be reported to said office in writing immediately after such change.

9. Registration of Persons With Service in Armed Forces of Foreign Governments.

9.01. Any person present within the Territory of Hawaii who has had service in the armed forces of any government or country other than the United States will forthwith report and submit, in

Respondent's Exhibit No. 16—(Continued) \
triplicate, to the nearest police station, a full and complete statement as to such service on the form provided for that purpose by the Military Governor. Such police stations will immediately forward these reports to the Office of the Military Governor.

9.02. Any such person hereafter entering the Territory of Hawaii shall so report and submit such statement within five (5) days after entry.

9.03. The term "service in the armed forces" shall mean service in the Army, Navy, Police Department, Intelligence Service, or other investigative agency, or any other military or naval branch or division, and shall also include attendance in any school, college or other institution of learning, teaching or giving R.O.T.C. training or its equivalent, or any other military or naval training or preparation.

9.04. The provisions of this Title 9 shall not apply to enemy aliens who have heretofore registered such service, nor shall it apply to members of the Armed Forces of the United States.

10. Wearing of Khaki Clothing by Civilians.

10.01. The wearing by other than service personnel of the duly prescribed uniform for the United States Army, Navy, Marine Corps, and Coast Guard, or similar clothing is prohibited.

10.02. The following rules will govern the wearing of outer articles of the prescribed uniform by other than service personnel:

Khaki shirts khaki trousers, and steel helmets may be worn while on duty by members of law enforcement and other governmental

Respondent's Exhibit No. 16—(Continued)
agencies, and such civilian organizations as may be designated by the Military Governor.

The khaki shirt together with the khaki trousers may be worn by civilian guards and certain other civilians engaged on duties with Army or Navy installations which require the wearing of such clothing while on duty at their specified place of work, but such clothing may not be worn away from the place of duty or on the streets. Authority to wear khaki clothing for this purpose must be obtained from the Military Governor or his District Representative, by the officer in charge of the activity under whom the civilian is working.

All other civilians may wear either the khaki trousers or khaki shirts at any time or place, but a combination of a khaki shirt and khaki trousers or other clothing which is similar to the Army, Navy, or Marine uniforms is prohibited.

11. Brassards (Arm Bands) for Navy and Marine Officers.

11.01. The Commandant, Fourteenth Naval District, has prescribed the wearing of brassards (arm bands) by certain designated Navy and Marine officers while on official duty outside naval reservations. The brassards are described as follows:

For officers of the Fourteenth Naval District:
Gold lettering "14ND" on a white flannel background, brassard measuring four inches wide by eleven inches long, lettering $3\frac{1}{8}$ inches long by $\frac{1}{2}$ inch wide.

Respondent's Exhibit No. 16—(Continued)

For officers of the Naval Transportation Service on official missions involving special identification: Blue lettering "NTS" on a white flannel background, brassard measuring four inches wide by eleven inches long, lettering $3\frac{1}{8}$ inches long by $\frac{5}{8}$ inch wide.

For officers of the Supply Corps on official missions: Green lettering "SD NYPH" on a white flannel background, brassard measuring four inches wide by eleven inches long, lettering $1\frac{5}{8}$ inches long by $\frac{3}{8}$ inch wide.

11.02. All military and civilian personnel are instructed to pass officers wearing the brassards described hereinabove with the least possible delay.

11.03. The Provost Marshal, Hawaiian Department, will be furnished by the Commandant, Fourteenth Naval District, with a list of the officers authorized to wear brassards.

12. Office of the Military Governor Brassard (Arm Band).

12.01. Officers and enlisted men of the Army of the United States, except Military Police, on duty in the Office of the Military Governor, will wear a brassard (arm band) on the left arm as follows:

Green band, three inches wide with the letters "OMG" thereon in white.

12.02. All military and civilian personnel are instructed to pass persons wearing such bands with the least possible delay.

12.03. The Executive of the Military Governor will furnish to the Provost Marshal the name of

Respondent's Exhibit No. 16—(Continued)

each person on duty in the Office of the Military Governor who is authorized to wear a brassard as described in Paragraph 12.01 above.

13. Penalty for Violations.

13.01. Any person, firm, or corporation, who or which violates, refuses, fails, or neglects to comply with any of the provisions of this General Orders, or furnishes any false information in compliance with any of the provisions of this General Orders, or who or which evades or attempts to evade any of the provisions hereof, upon conviction thereof, shall be punished by confinement with or without hard labor not to exceed five (5) years, or by a fine not to exceed Five Thousand Dollars (\$5,000.00), or by both such confinement and fine.

By order of the Military Governor of the Territory of Hawaii:

THOMAS H. GREEN

Brigadier General, A.U.S.

Executive

10 March 1943.

GENERAL ORDERS No. 9

Communications

1. Purpose.
2. Telephone.
3. Radio Regulations.
4. Radio Dealers' Regulations.
5. Signal Representative, Office of the Military Governor.
6. Use and Operation of Electrical Diathermy Type Machines.

Respondent's Exhibit No. 16—(Continued)

7. Photographic Materials Rules.
8. Cameras and Photography.
9. Carriage of Information to the Mainland.
10. Pigeons.
11. Penalty for Violation.

1. Purpose.

1.01. This General Orders is issued in the interests of internal security as additional protection against possible espionage and sabotage.

2. Telephone.

2.01. All activities of the Mutual Telephone Company except those activities associated with the Transpacific Radiotelephone Service, are placed under the control of the Department Signal Officer for the purpose of providing the maximum use of the facilities to the armed forces. The Department Signal Officer will supervise the use and disposition of all stocks of supplies and equipment on hand or received by the Mutual Telephone Company.

2.02. No action of any nature will be undertaken by any official of the Mutual Telephone Company at any time which would operate to interfere with or deprive the armed forces of the maximum use of any facility of the Mutual Telephone Company now available or which may become available, without prior approval of the Department Signal Officer.

3. Radio Regulations.

3.01. Definitions. For the purpose of this General Orders, unless the context otherwise requires, the following terms and equivalent expressions shall have the following respective meanings:

Respondent's Exhibit No. 16—(Continued)

"Person" shall mean any individual, partnership, company, association, corporation, agency or other organized group of persons.

"Radio equipment" shall mean any parts, sets, equipment, or supplies that are designed for or are capable of being used for reception, transmission or amplification of radio waves.

"Transmitting equipment" shall mean any equipment or apparatus or parts thereof capable of being used or converted into apparatus for the transmission of radio frequency energy, including but not by way of limitation, all transmitting sets, phonograph oscillators, signal generators, or other such apparatus or equipment which it may be deemed necessary to impound for the preservation of the security of the Territory of Hawaii.

"Short-wave receiver" shall mean any radio set or equipment capable of receiving broadcasts on frequencies other than those between 550 kilocycles and 1750 kilocycles.

"Frequency modulated receiver" shall mean any radio set capable of frequency modulation reception or any frequency modulation adapter.

"Household" shall mean those individuals sharing a common dwelling, as a family.

"Broadcast band receiver" shall mean any radio receiver designed for or altered to receive only radio waves between 550 kilocycles and 1750 kilocycles including additional radio tubes possessed for and only in conjunction with such radio receiver.

"Operate" shall mean to use or to keep in such manner that it is available for use.

Respondent's Exhibit No. 16—(Continued)

"Possess" shall mean belonging to or in the possession, custody, or control of.

"Governmental Agency" shall mean any authorized Army, Navy, Federal, Territorial or City agency.

"Dealer" shall mean any person other than the ultimate consumer engaged in the importation, purchase, sale, loan, construction, or repair of radio equipment.

"Signal Representative" shall mean the Signal Representative, Officer of the Military Governor, as designated in this General Orders.

3.02. No enemy alien or household of which an enemy alien is a member shall possess or operate any radio equipment other than a broadcast band receiver.

3.03. No person shall operate a short-wave receiver or frequency modulated receiver in such manner that the reception is accessible directly or indirectly to any enemy alien, nor allow or permit an enemy alien to operate a short-wave receiver or frequency modulated receiver.

3.04. No person except governmental agencies and licensed dealers, shall possess any transmitting equipment unless such transmitting equipment shall be registered with the Signal Representative and authorization for such possession granted not later than five (5) days from the date of this General Orders, except that persons who have already registered with the Signal Representative and have secured his authorization for possession need not register nor secure such authorization again.

Respondent's Exhibit No. 16—(Continued)

3.05. No person except governmental agencies and licensed dealers shall possess any frequency modulated receiver.

3.06. Short-wave and frequency modulated receivers, the possession of which is prohibited, shall be altered by the United States Army Signal Corps.

3.07. All radio equipment, the possession of which is prohibited, shall be delivered to any Police Station for custody.

3.08. Application for authorization of possession of transmitting equipment will be made to the Signal Representative on Form S/R-108, supplied by him.

3.09. On the Island of Oahu all correspondence, applications, reports, or appeals in connection with Paragraphs 3.01 to 3.08 above will be submitted directly to the office of the Signal Representative, Komatsuya Hotel, 491 North King Street, Honolulu, T. H. On all other islands it will be submitted through the Service Command of that island.

4. Radio Dealers' Regulations.

4.01. Definitions. For the purpose of this General Orders, unless the context otherwise requires, the following terms and equivalent expressions shall have the following respective meanings:

"Class 'A' controlled item" shall mean any item of radio equipment classified as a class "A" controlled item by the Military Governor.

"Class 'B' controlled item" shall mean any item of radio equipment classified as a class "B" controlled item by the Military Governor.

"Deal in" shall mean any importation, purchase,

Respondent's Exhibit No. 16—(Continued)
sale, loan, repair or other transaction or disposition.

All definitions given in Paragraph 3.01 of this General Orders shall apply equally to the following paragraphs.

4.02. No person shall deal in radio equipment unless licensed by the Signal Representative upon application as provided herein made not later than five (5) days from the date of this General Orders, except that persons who have secured the prescribed license from the Signal Representative prior to the date of this General Orders need not secure such license again.

4.03. No class "A" controlled items may be sold except upon presentation of a purchase permit issued by the Signal Representative.

4.04. No person shall purchase at any one time any class "B" controlled item in excess of the limit stated herein, unless upon presentation of a purchase permit issued by the Signal Representative. The amount may be limited by number, by replacement, or both. No sales or purchases in excess of previous normal sales shall be made.

4.05. No person except a licensed repairman shall repair, alter, modify or tamper with any radio, or remove or mutilate any seal attached to any radio which has been altered by the Signal Corps under the provisions of any General Orders of the Military Governor.

4.06. No sales of radio supplies or equipment shall be made to any person without presentation of a Territorial Identification Certificate, or military or naval identification card or tag showing their

Respondent's Exhibit No. 16—(Continued)
non-enemy alien citizenship status. No sales of radio equipment, except receiving tubes, shall be made to any enemy alien except upon presentation of a purchase permit issued by the Signal Representative.

4.07. The provisions of Paragraph 4.04 of this General Orders shall not apply to purchases and sales of authorized purchasing officers of governmental agencies.

4.08. Individuals, not enemy aliens, making purchases or sales with licensed dealers or other persons not enemy aliens shall be excepted from the prohibitions of Paragraph 4.02 of this General Orders.

4.09. Persons desiring to purchase any class "A" controlled item or any class "B" controlled item in excess of the limitation may obtain a purchase permit from the Signal Representative authorizing such a purchase.

4.10. Upon designation of a class "A" controlled item all dealers shall make an inventory of all such items they possess or which they shall receive subsequent to such classification. This inventory will be submitted to the Signal Representative within three (3) days of such classification.

4.11. In the purchase of class "B" items controlled by "replacement" it shall be necessary for the person purchasing such items to turn in to the dealer an equal unserviceable item before sale of a new item shall be made.

4.12. All radio equipment which shall be received

Respondent's Exhibit No. 16—(Continued)
by dealers in accordance with Paragraph 4.11 above, shall be reported monthly to the Signal Representative who shall make disposal commensurate with the salvage value of the equipment.

4.13. Licensed dealers who shall make repairs on altered radio sets shall do so in accordance with instructions issued by the Signal Representative. A report of each altered set repaired will be made within five (5) days of completion of repairs on Form S/R-106, which may be obtained from the Signal Representative.

4.14. The following items are designated as class "A" controlled items:

Amplifiers
Audio Oscillators
Frequency Modulated Adapters
Frequency Modulated Receivers
Phonograph Oscillators
Signal Generators
Transmitters

4.15. The following items are designated as class "B" controlled items: Items limited in sale by number are designated by a figure and items limited in sale by replacement are indicated by "R":

Chokes	—R
Coils	—R
Condensors	—R
Insulators	—R
Radio Receivers	1
Radio Tubes (all types)	—R
Transformers (all types)	—R

Respondent's Exhibit No. 16—(Continued).

4.16. Application for license will be submitted on Form S/R-101.

4.17. Purchase permits will be obtained on the Island of Oahu from the office of the Signal Representative, Komatsuya Hotel, 491 North King Street, Honolulu, T. H. On all other islands purchase permits will be obtained from the Service Command of that island.

4.18. All correspondence will be submitted in accordance with Paragraph 3.09 of this General Orders.

5. Signal Representative, Office of the Military Governor.

5.01. The Department Signal Officer, Headquarters Hawaiian Department, is designated as Signal Representative, Office of the Military Governor. The Department Signal Officer may designate Assistant Signal Representatives to whom he may delegate the powers granted herein in such degree as he may deem necessary.

6. Use and Operation of Electrical Diathermy Type Machines.

6.01. No person, firm or corporation shall use or operate, or cause to be used or operated, any electrical diathermy type machine, unless such person, firm, or corporation first secures a license issued by the Military Governor permitting such use or operation.

6.02. Any person, firm, or corporation, who owns, operates, or has custody of any electrical diathermy type machine on the Island of Oahu will

Respondent's Exhibit No. 16—(Continued)

cause the same to be registered immediately at the Signal Representative's Office located at the Komatsuya Hotel, 491 North King Street. Any person, firm, or corporation who owns, operates, or has custody of any electrical diathermy type machine on any of the other Islands in the Territory of Hawaii, will immediately cause the same to be registered with the District Commander of the island upon which it is located. The provisions of this Paragraph 6.02 shall not apply to any person, firm, or corporation who has heretofore registered such machine pursuant to prior General Orders of the Military Governor.

6.03. A Board of Officers, consisting of a Signal Officer and a Medical Officer is hereby authorized to grant licenses for the use and operation of electrical diathermy type machines in accordance with such rules and regulations as they may prescribe. Licenses heretofore issued by said board under prior registrations hereby are ratified and confirmed, and such licenses hereby are deemed to authorize the use and operation of such electrical diathermy type machines on the same basis, and subject to the same rules and regulations, as though such licenses had been issued under the provisions of this General Orders.

6.04. Any diathermy type machine for which a license to operate is not issued shall be impounded by the Signal Representative, and a receipt therefor will be issued to the owner thereof, if known, or to the person from whom possession thereof is taken.

6.05. The transfer, sale, or other disposition of

Respondent's Exhibit No. 16—(Continued)

any electrical diathermy type machine is prohibited unless written consent is obtained from the Military Governor. Such consent may be obtained at the office of the Signal Representative.

6.06. No electrical diathermy type machine shall be imported into the Territory of Hawaii without the written consent of the Military Governor.

7. Photographic Materials Rules.

7.01. The sale or other disposition of photographic supplies or equipment to any consignee in abnormal or excessive quantities by any wholesale dealer or importer from stocks on hand or to be received which would operate to deprive the use thereof, or otherwise interfere with the supply of, such supplies or equipment to the military or naval authorities is prohibited.

7.02. Prior to delivery to any consignee by any wholesale dealer or importer of photographic supplies or equipment of quantities from stocks on hand or to be received which are abnormal or in excess of amounts normally disposed of, such dealer or importer shall secure a clearance permit from the Signal Representative, Office of the Military Governor, authorizing such sale or disposition.

8. Cameras and Photography.

8.01. No person other than a person first duly authorized to do so by competent military or naval authorities shall use any camera on any beach in the Territory of Hawaii or use any camera while in, on, or about any airplane, boat, or ship, in waters or air within the Territory of Hawaii or encompassing the said area.

8.02. No person other than a person first duly

Respondent's Exhibit No. 16—(Continued)

authorized to do so by competent military or naval authorities shall photograph or take pictures from, in, on, or of, any military or naval reservation, post, arsenal, proving ground, range, camp, fort, yard, station, district, or restricted military or naval area; or any portion thereof; any shoreline within the Territory of Hawaii; or any military or naval installation, equipment, aircraft, weapons, ammunition, vehicles, ships, vessels, instruments, engines, manufacturing machinery, tools, devices, or any other equipment whatsoever in the possession or use of the Army or Navy, or in the course of experimentation, development, or manufacture, for delivery to and use by the Army or Navy.

9. Carriage of Information to the Mainland.

9.01. No person shall carry to the mainland, or elsewhere for transportation to the mainland, by clipper, ship, or otherwise, any written or printed matter whatsoever, or any photographs, sketches, or drawings, which have not been censored and so marked by a duly authorized censor.

9.02. No person shall send or deliver to another person any written or printed matter whatsoever, or any photographs, sketches, or drawings, for the purpose of having such other person carry such matter to the mainland to avoid censorship.

9.03. No person shall evade, or attempt to evade, censorship by indicating on any envelope, or other container, that the matter contained therein has been censored by a duly authorized censor, or by the re-use of censor labels or by the use of envelopes

Respondent's Exhibit No. 16—(Continued)

or other containers upon which a censor's stamp, or other means indicating censorship, has been used; or to attempt in any other manner or by any other means to evade the local censorship requirements.

10. Pigeons.

10.01. No person shall without the express written permission of the Military Governor transport, carry, or deliver any carrier or homing pigeon, or any other pigeon or bird having the characteristic and ability to carry and transmit a message, code, or writing, from one place to another within the Territory of Hawaii for the purpose of permitting it, or causing it, to fly.

10.02. No person shall send or transmit any message, writing, or code by means of such birds as are described in Paragraph 10.01 above within the Territory of Hawaii.

10.03. The provisions of Paragraph 10.01 and 10.02 above shall not apply to the armed forces of the United States or other governmental units thereof.

11. Penalty for Violations.

11.01. Any person, firm, or corporation who or which violates or evades, or attempts to violate or evade, any of the provisions of this General Orders, shall, upon conviction thereof, be punished by confinement, with or without hard labor, for a period not to exceed five (5) years, or by a fine not to exceed Five Thousand Dollars (\$5,000.00), or by both such confinement and fine.

Respondent's Exhibit No. 16—(Continued)

By order of the Military Governor of the Territory of Hawaii:

THOMAS H. GREEN

Brigadier General, A.U.S.

Executive

10 March 1943

GENERAL ORDERS No. 10

Labor

1. Policy.
2. Registration.
3. Employment.
4. Wages.
5. Hours of Work and Overtime.
6. Use of Labor.
7. Appeal Agency.
8. Child Labor.

1. Policy.

1.01. The following policies are announced for the information and guidance of employers employing the services of (a) employees of the United States under the War Department or the Navy Department; (b) workers employed on construction and other projects under the War Department or the Navy Department; (c) stevedores and other workers employed on docks and dock facilities; and (d) employees of public utilities. The same policies shall be equally applicable to employees of the above-mentioned employing agencies.

2. Registration.

2.01. Any person, now or hereafter employed by

Respondent's Exhibit No. 16—(Continued)

any of the employers to whom reference is made in Paragraph 1.01, and who ceases to be so employed, shall, within two (2) days after ceasing to be so employed, register or re-register with the nearest office of the United States Employment Service.

2.02. Every employer described in Paragraph 1.01 shall notify the nearest office of the United States Employment Service on Form USES-(H)1, prescribed by the United States Employment Service, of any employee added to such employer's payroll and on Form USES-(H)2, prescribed by the United States Employment Service, of any employee dropped from such employer's payroll, within two (2) days thereafter.

2.03. Any person, firm, or corporation who violates, refuses, fails or neglects to comply with any of the provisions of Paragraphs 2.01 and 2.02 above, upon conviction thereof, shall be fined not more than One Thousand Dollars (\$1,000.00), or be imprisoned for not more than one (1) year, or both.

3. Employment.

3.01. Employers described in Paragraph 1.01 may maintain their own labor recruiting facilities.

3.02. The United States Employment Service hereby is designated as the central employment agency for the distribution of civilian labor hereby required to register, and shall allocate labor in the fulfillment of employers' requisitions in accordance with priorities established by the Office of the Military Governor.

3.03. No employer described in Paragraph 1.01

Respondent's Exhibit No. 16—(Continued)
shall employ or offer to employ an individual formerly, now, or hereafter in the employment of other such employers, unless and until such individual shall have presented to the employing agency a bona fide release without prejudice, on Form USES-(H)2, from his last previous employer or from the Director of Labor Control, and evidence of registration on Form USES-350, or Form USES-506.

3.04. Any individual, who is, has been, or hereafter shall be, employed by any employer described in Paragraph 1.01, who presents himself to any other such agency and secures or attempts to secure employment without having a bona fide release without prejudice from his last previous employer, or from the Director of Labor Control, or in any way misrepresents his employment status with regard to such release, shall, upon conviction, be fined not more than two hundred dollars (\$200.00), or be imprisoned for not more than two (2) months, or both.

3.05: Any employer or employer's agent who shall cause any individual to be employed in contravention of Paragraph 3.03 hereof, shall, upon conviction, be fined not more than two hundred dollars (\$200.00), or be imprisoned for not more than two (2) months, or both.

4. Wages.

4.01. Revised Wage Schedule No. 9, dated 3 May 1942 and effective at the beginning of the first payroll period after 3 May 1942, hereby is designated as the standard wage scale for workers engaged in work on construction and other projects under the

Respondent's Exhibit No. 16—(Continued)

War Department or the Navy Department. No person seeking work or employed on construction or other projects under the War Department or the Navy Department, shall be employed at a rate less than, or in excess of the standard rate for the job as listed in Wage Schedule No. 9, and as same may be revised from time to time, as approved by the Military Governor.

4.02. Federal agencies under the War Department or the Navy Department shall continue their regularly established wage schedules.

5. Hours of Work and Overtime.

5.01. Normal work week for employees on construction and other projects under the War Department or the Navy Department shall be six (6) days of eight (8) hours each. The maximum number of hours worked in any seven (7) consecutive days shall not exceed fifty-six (56), except in cases of emergency and with the approval of the Chief of Military or Naval Service concerned.

5.02. Normal work week for employees of the United States under the War Department or Navy Department shall conform to applicable Federal regulations.

5.03. Employees on construction and other projects under the War Department or the Navy Department shall be paid overtime at the rate of one and one-half the regular rate for overtime in excess of forty-four (44) hours per week, or in excess of eight (8) hours in any one day. Double the regular rate will be paid for work performed on the seventh consecutive work day. One and one-half the

Respondent's Exhibit No. 16--(Continued)
regular rate will be paid for work performed on any of the following days only: New Year's Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day and Memorial Day.

5.04. Paragraph 5.03 above shall not apply to employees who are in a supervisory capacity on a monthly salary basis.

5.05. Employees of the United States under the War Department and the Navy Department shall be paid overtime in accordance with applicable Federal regulations.

5.06. For employees engaged on construction and other projects under the War Department and the Navy Department, work shall be so scheduled that all employees shall receive one (1) day off in seven (7). Sunday work per se shall not be considered overtime, and no overtime shall be paid for Sunday except when it is worked consecutively in excess of six (6) days.

5.07. The provisions of any contract between individual employees, labor unions, and employers engaged on construction and other projects under the War Department or the Navy Department, in conflict with the provisions of this General Orders hereby are suspended.

6. Use of Labor.

6.01. Terms of labor contracts between individuals and employers engaged on construction and other projects under the War Department or the Navy Department which restrict or specify the nature of work to be performed, hereby are suspended.

Respondent's Exhibit No. 16—(Continued)

6.02. Any person now or hereafter employed by any employer described in Paragraph 1.01 hereof shall report regularly to the job to which he is ordered by said employer.

6.03. Employers and employers' agents described in Paragraph 1.01 are directed to refrain from discriminatory practices toward employees with regard to releases or other matters relating to termination of employment.

6.04. No employer or employer's agent shall fail or refuse to abide by the decisions of the Director of Labor Control on any matters within the meaning of Paragraph 6.03.

6.05. Any person, firm or corporation who or which violates, refuses, fails, or neglects to comply with any of the provisions of Paragraphs 6.01 to 6.04 inclusive, or who or which evades or attempts to evade any of the provisions of said Paragraphs 6.01 to 6.04, inclusive, upon conviction thereof, if a natural person, shall be punished by confinement, with or without hard labor, not to exceed two (2) months, or by a fine not to exceed two hundred dollars (\$200.00), or by both such confinement and fine, or, if a corporation or other than a natural person, by a fine not to exceed two hundred dollars (\$200.00).

7. Appeal Agency.

7.01. Persons discharged with prejudice from employment with employers mentioned in Paragraph 1.01 hereof, may appeal their cases to the Appeal Agency, Office of the Director of Labor

Respondent's Exhibit No. 16—(Continued)

Control, for decision as to whether or not they may be allowed to continue work with another employer.

7.02. The Director of Labor Control, Office of the Military Governor, hereby is designated as the Appeal Agency for persons discharged with prejudice by employers described in Paragraph 1.01. Any individual not satisfied with the decision of the Appeal Agency may appeal his case to the Labor Control Board of the Military Governor.

8. Child Labor.

8.01. Employers described in Paragraph 1.01 shall comply with the provisions of Section 18 of Chapter 259-B of the Revised Laws of Hawaii 1935, as enacted by Act 237 of the Session Laws of Hawaii 1939, as amended by Act 319, Session Laws of Hawaii, Regular Session 1941.

By order of the Military Governor of the Territory of Hawaii:

THOMAS H. GREEN

Brigadier General, A.U.S.

Executive

10 March 1943

GENERAL ORDERS No. 11

Military Property

1. Purpose.
2. Military Property Comptroller.
3. Internee and Evacuee Property Coordinator.
4. Japanese Motion Picture Film.
5. Firearms and Weapons.

Respondent's Exhibit No. 16— (Continued)

6. Pyrotechnics.
7. Penalty for Violations.

1. Purpose.

1.01. This General Orders is issued in the interests of internal security as additional protection against possible espionage and sabotage.

2. Military Property Comptroller.

2.01. There is hereby created the office of Military Property Comptroller, to operate as an agency of the Office of the Military Governor.

2.02. All civilian and military components, except Provost Courts and Military Commissions, which have taken possession of, commandeered, confiscated, or otherwise received or shall hereafter take possession of, commandeer, confiscate or otherwise receive property of any kind or nature, either by authority of the General Orders issued by the Office of the Military Governor or otherwise, shall give receipt therefor in the following form:

.....
(Issuing Agency)

Honolulu, T. H.

No.....

Date.....

This certifies that the undersigned has received from

(Name of Individual)

(Address)

the following articles which were surrendered in accordance with military Orders:

}
(Signature of Agent Receiving)

Respondent's Exhibit No. 16—(Continued)

2.03. The receipt shall contain adequate description of each item of property it covers, be made in duplicate, numbered, dated and signed by the Receiving Agent. The original of the receipt shall be issued to the owner of the property described thereon or the person from whom the property was received; the duplicate of the receipt shall contain the following additional statement which shall be signed by the owner or person surrendering the property:

"I hereby certify that the above is a complete list of articles which I have surrendered to the Agency indicated on this date."

.....
(Signature of Owner)

2.04. Each civilian or military component which has received or shall receive property as in Paragraph 2.02 above, shall prepare in triplicate a list of all such property showing each item received and the number of the receipt issued therefor. One copy of such list shall be delivered to the Military Depository having or to have actual possession of the property along with the property or as soon as possible thereafter if the property has already been delivered. One certified copy of such list shall be delivered by the Military Depository together with the duplicates of all receipts issued by the Agency concerned to the Military Property Comptroller. The Military Property Comptroller shall return all duplicate receipts to the Military Depository having actual possession of the property. Each item of property shall have attached thereto a tag or

Respondent's Exhibit No. 16—(Continued)

other identification mark showing the name of the owner and the number of the receipt issued therefor.

2.05. Receipts shall be issued and lists made for all property taken since 7 December 1941. Where the owner is not known, such fact shall be certified by a Responsible Authority of the issuing Agency on the original and duplicate of the receipt. Every effort shall be made by Agencies receiving property in the first instance to locate the owner thereof and obtain his verification.

2.06. After the property has been properly tagged, the duplicates of the receipts representing property in possession of each Military Depository shall be filed in numerical order and held by it. Each such Military Depository shall prepare and keep on file a complete inventory of all alien property held by it, in addition to the above mentioned list, and shall note on said inventory its estimate of the present value of each item thereon and the estimate of a qualified appraiser if available.

2.07. It is the purpose of this procedure to establish accountability so that there will be available complete records for the settlement of all claims in connection with property so taken, confiscated, commandeered, or otherwise received.

3. Internee and Evacuee Property Coordinator.

3.01. There is hereby established an Internee and Evacuee Property Coordinator of this office with offices in the Immigration Station, Honolulu, T. H., to administer the policy of the Military Governor in regard to the security and settlement of property

Respondent's Exhibit No. 16—(Continued)
belonging to persons interned, evacuated or otherwise separated from their property by military order.

3.02. All plans for action whereby civilians are removed or separated from their property by military order will be cleared with the Property Coordinator before action is taken.

3.03. In all instances of separation or removal of civilians from their real or personal property by military order, where reasonable property settlements cannot be immediately accomplished, or where it is felt that extraordinary loss will result from internment or evacuation, or where attempts are being made to exploit the fact of internment or evacuation, the Property Coordinator will be notified by any person or persons having an interest in such property.

3.04. The internee and Evacuee Property Coordinator and his assistants are agents of the Military Governor only and regardless of certain administrative assistance provided by this office, the Property Coordinator and his assistants will not be held agents of, nor responsible to, any person separated or removed from his property by military order.

4. Japanese Motion Picture Film.

4.01. Definitions: As used in this order, the term "Japanese motion picture film" shall include the following:

Any motion picture film made, manufactured or produced in Japan.

Any motion picture film made, manufactured or produced under Japanese control; and

Respondent's Exhibit No. 16—(Continued)

Any motion picture film having titles or sound track in the Japanese language.

4.02. The Department Signal Officer, Headquarters Hawaiian Department, Fort Shafter, T. H., is hereby designated and directed to regulate and control the handling, custody, use and disposition of all Japanese motion picture film in the Territory of Hawaii, and shall have full power and authority to require the storage or destruction of any such film as he may deem necessary or advisable in the interests of military necessity.

4.03. Any person, firm, corporation or association having in possession any Japanese motion picture film shall forthwith file a descriptive report listing such film, giving such information as may be required. Such report shall be filed with said Department Signal Officer or his representatives.

Such report need not be filed where a similar report has been submitted as required by prior Orders of the Military Governor.

4.04. Unless otherwise provided for by special agreement with the owner thereof, the procedure for receipts set forth in paragraphs 2.01 through 2.07 of this General Orders shall be followed for all Japanese motion picture film taken in by the Department Signal Officer.

5. Firearms and Weapons.

5.01. Firearms, ammunition, explosives and weapons in the possession of persons of Japanese ancestry, naturalized American citizens who were citizens of Germany or Italy, and American citizens

Respondent's Exhibit No. 16—(Continued)

whose parents were German or Italian citizens, will be turned in to the nearest police station immediately.

6. Pyrotechnics.

6.01. The possession or use by any person, firm, corporation, or association, of fireworks, roman candles, flares, torpedoes, pyrotechnics, or powder operated signalling devices of any kind, is hereby prohibited except as authorized by the Provost Marshal.

7. Penalty for Violations.

7.01. Any person, firm, or corporation who or which violates or evades, or attempts to violate or evade, any of the provisions of this General Orders, shall upon conviction thereof, be punished by confinement, with or without hard labor, for a period not to exceed one (1) year, or by a fine not to exceed One Thousand Dollars (\$1,000.00), or by both such confinement and fine.

By order of the Military Governor of the Territory of Hawaii:

THOMAS H. GREEN

Brigadier General, A.U.S.

Executive

10 March 1943

GENERAL ORDERS No. 12

Travel

1. Purpose.
2. Travel Control Bureau.
3. Priorities for Air Travel.
4. Enemy Aliens.

Respondent's Exhibit No. 16—(Continued)

5. Applications for Air Travel.

6. Military Aircraft—Quarantine Procedure.

1. Purpose.

1.01. This General Orders is issued in the interests of internal security as additional protection against possible espionage and sabotage.

2. Travel Control Bureau.

2.01. For the purpose of carrying out the provisions of Presidential Proclamations and Executive Orders, and the provisions of this General Orders, with respect to inter-island travel by enemy aliens, and for the purpose of controlling and regulating inter-island travel by air with a view to conservation of facilities for necessary and important traffic, a Travel Control Bureau hereby is established in each District.

2.02. The Travel Control Bureau in the City and County of Honolulu will function as a section of the Contact Office, Office of the Assistant Chief of Staff, G-2, Headquarters Hawaiian Department, and in each of the other Districts the Bureau will be under the control of the District Commander thereof.

On the Island of Kauai the Office of Military Intelligence shall function as the Travel Control Bureau, as designated by the Commanding General, Kauai District.

2.03. An officer from the Contact Office, Office of the Assistant Chief of Staff, G-2, Headquarters Hawaiian Department, will be detailed to the office of the Hawaiian Airlines, Limited, Honolulu, T.

Respondent's Exhibit No. 16—(Continued)

H., for the purpose of examining applications for such travel from the Island of Oahu.

On the Island of Kauai a representative from the Office of the Military Governor, Kauai Service Command, will be detailed to the Office of Kauai Terminals, Port Allen, Kauai, T. H., to examine applications for travel originating in the Kauai District.

The Commanding General of each of the other military districts of the Territory, or officer designated by him, will examine applications for travel originating in their respective districts.

3. Priorities for Air Travel.

3.01. Transportation priorities shall be provided in the following order:

Military personnel (Army, Navy, Marine Corps and Coast Guard) travelling under official orders;

Army and Navy equipment, ammunition, supplies, and materials essential to the war effort ordered for air movement;

Personnel of government departments and agencies and personnel whose activities are essential to the war effort, other than military personnel, travelling on official business which is necessary to the successful prosecution of the war effort;

Persons other than those mentioned above travelling on business;

Other persons.

3.02. Clearing of space for passengers or cargo of higher priority classifications may require displacement of passengers in the last three classifications listed above.

Respondent's Exhibit No. 16--(Continued)

4. Enemy Aliens.

4.01. No enemy alien will be allowed to travel on any airplane, Governmental or commercial, except in cases of extreme emergency when such travel may be authorized by the Travel Control Bureau after proper precautions and safeguards have been taken. "Extreme emergency" is limited to persons dangerously ill or in need of medical treatment not available in their immediate location. When possible, such persons will be accompanied by a trusted physician, nurse, or attendant. In any event, when the travel of an enemy alien is allowed, the crew of the airplane will be so advised in order that they may be able to keep the passenger under close surveillance at all times.

5. Applications for Air Travel.

5.01. All persons requiring air transportation will report in person at the local office of the transportation company or other designated place and fill out the required application form. The travel control officer will pass on each application and grant the priority authorized. Tickets may be sold only after the application has been approved by the travel control officer. The office from which it is proposed to purchase transportation should be contacted as soon as possible.

5.02. All persons desiring to travel by airplane between the islands in the Territory of Hawaii must show reason and necessity for such travel and establish proof of their identity in submitting their application. Proof of citizenship must be fur-

Respondent's Exhibit No. 16—(Continued)
nished to the satisfaction of the travel control officer.

5.03. The application for travel will be submitted on the form prescribed by the Military Governor. The application will be made in quadruplicate. The following disposition of the application will be made:

The original—returned to applicant. If approved, it will be surrendered to the carrier at the time passage is purchased.

The duplicate—sent to the Contact Office, Office of the Assistant Chief of Staff, G-2, Headquarters Hawaiian Department, 214 Dillingham Building, Honolulu, T. H., at the close of each day.

The triplicate—sent to G-2, Office of the Commanding General of the District to which travel is to be made.

The quadruplicate—retained in office of the Travel Control Bureau for record.

5.04. All passengers travelling on priority will have their tickets stamped with the class of "Priority" at the time the ticket is purchased to insure proper handling at stopovers or return from other Districts.

5.05. Baggage and persons will be searched only when it is deemed advisable to make such search.

5.06. No written or printed matter in any language other than English will be taken aboard any commercial aircraft without prior approval by local Military Intelligence officials.

5.07. No maps, charts, or blueprints will be transported except by authorized persons.

Respondent's Exhibit No. 16—(Continued)

5.08. No photographs or negatives showing any of the beaches, shoreline, panoramic views from a high point, or military or naval installations will be transported. Under no circumstances will any (except official) undeveloped film be transported.

6. Military Aircraft—Quarantine Procedure.

6.01. The Local Director of the United States Public Health Service and the Plant Quarantine Inspector of the Department of Agriculture are relieved of their respective duties and responsibilities concerning disinsectization and plant inspection of military aircraft arriving at the Hawaiian Islands.

6.02. Two Medical Officers, a Quarantine Officer and an Assistant Quarantine Officer, designated by name by the Commanding General, Hawaiian Department, hereby are designated as Quarantine Officers for the quarantine inspection of military aircraft arriving from outside the Hawaiian Islands to include disinsectization and plant and animal quarantine inspection of these aircraft.

6.03. The Local Director of United States Public Health Service and the Plant Quarantine Inspector are designated as consultants to the Surgeon, Hickam Field, for these procedures.

By order of the Military Governor of the Territory of Hawaii:

THOMAS H. GREEN

Brigadier General, A.U.S.

Executive

Respondent's Exhibit (No. 16—(Continued))
10 March 1943

GENERAL ORDERS No. 13

Rescission of General Orders Nos. 1 to 181, Inclusive, Saving Clause, and Effective Date of General Orders Nos. 1 to 14, Inclusive, This Office, Dated 10 March 1943.

1. Rescission of General Orders Nos. 1 to 181, Inclusive, and Saving Clause.
2. Effective Date of General Orders Nos. 1 to 14, Inclusive, This Office, Dated 10 March 1943.

1. Rescission of General Orders Nos. 1 to 181, Inclusive, and Saving Clause.

1.01. General Orders Nos. 1 to 181, both inclusive, this office, bearing dates from December 7, 1941, to January 30, 1943, both dates inclusive, and all regulations issued pursuant to or under said General Orders, are rescinded as of March 10, 1943, provided, however, that the rescission of the aforesaid General Orders and regulations as herein provided shall not have the effect to release or extinguish any penalty, forfeiture or liability incurred by any person or to which any person or property has become subject or liable, under such General Orders Nos. 1 to 181, inclusive, or said regulations, or any part, portion, or provision of said General Orders, or said regulations, prior to March 10, 1943, nor constitute a bar on or after March 10, 1943, to the filing or preferring of charges against persons for violations of said General Orders, said regulations, or any part of por-

Respondent's Exhibit No. 16—(Continued)

tion thereof committed prior to March 10, 1943, or the trial and determination of such offenses or charges against such persons by the Provost Courts, Military Commissions, and the Military Governor of the Territory of Hawaii; and provided, further, that the said General Orders, said regulations, and parts, portions, and provisions thereof so rescinded shall be and remain in force on and after March 10, 1943, for the purpose of authorizing the prosecution, trial, conviction, and punishment of all persons who shall have violated said General Orders, or said regulations, as aforesaid, prior to March 10, 1943, and that every offender having committed an offense or violation against such General Orders, or said regulations, prior to March 10, 1943, shall be punished under the General Orders, regulations, parts, provisions, or portions thereof, ~~in~~ force when the offense or violation was committed.

2. Effective Date of General Orders Nos. 1 to 14, Inclusive, This Office, Dated 10 March 1943.

2.01. General Orders, Nos. 1 to 14, both inclusive, this office, each dated March 10, 1943, and of which series of General Orders this General Orders is one and is No. 13, shall be in full force and effect throughout the Territory of Hawaii on and after March 10, 1943.

By order of the Military Governor of the Territory of Hawaii:

THOMAS H. GREEN

Brigadier General, A.U.S.

Executive

Respondent's Exhibit No. 16—(Continued)

10 March 1943

GENERAL ORDERS No. 14

Organization of the Office of the
Military Governor

1. Executive Section.
2. District Representatives of the Military Governor.
3. Plans and Operations.
4. Central Identification Bureau.
5. Appointments.
6. Location of the Office of the Military Governor.

1. Executive Section.

1.01. Executive. The Executive and Assistant Executive of the Military Governor and others designated by them shall function on behalf of the Military Governor in carrying out the administration of all policies and operations of martial law and in coordinating and controlling all functions connected with such administration.

1.02. Law Enforcement. The military commissions, provost courts, and the Provost Court Commissioner will carry out the functions assigned to them in General Orders No. 2, this office, 10 March 1943, and amendments and additions thereto.

1.03. Legal Section. This section shall handle all matters with reference to military commissions and provost courts including review and appeal therefrom and recommendations to the Military Governor thereon, and shall render legal advice.

Respondent's Exhibit No. 16—(Continued)

to the Military Governor and handle such other related matters as the Executive of the Military Governor may direct.

1.04. Public Information. Press releases and other information will be made available to the public by this section as ordered by the Military Governor.

1.05. Personnel. This section shall procure and administer the necessary personnel for the office operation of the Military Governor and perform such other related functions as directed.

1.06. Finance. This section shall handle all matters of finance connected with the office of the Military Governor and procure and administer supplies and equipment therefor.

1.07. Statistics and Engineering. This section shall handle all matters related to statistics and engineering referred to it by the Military Governor.

1.08. Trans-Pacific Travel. This section shall handle all matters concerning priorities of trans-Pacific travel and make recommendations to the Military Governor with reference thereto.

1.09. Military Property Comptroller. The Military Property Comptroller will carry out the functions set forth in Title 2. of General Orders No. 11, this office, 10 March 1943, and any amendments or additions thereto.

1.10. Internee and Evacuee Property Coordinator. The Internee and Evacuee Property Coordinator will carry out the functions set forth in Title 3. of General Orders No. 11, this office, 10

Respondent's Exhibit No. 16—(Continued)
March 1943, and any amendments or additions thereto.

1.11. Hawaiian Department Alien Processing Center. The Hawaiian Department Alien Processing Center will handle all matters with reference to the interment or evacuation of persons in the Territory of Hawaii which are referred to it by the Military Governor.

2. District Representatives of the Military Governor.

2.01. The Commanding Generals of the Hawaii, Maui, Kauai, and Molokai-Lanai districts hereby are appointed Representatives of the Military Governor and hereby are charged with assisting in the administration and enforcement of the policies and orders of the Military Governor in their respective districts.

2.02. Representatives of the various sections and bureaus of the Office of the Military Governor will be appointed within the Districts of Hawaii, Maui, Kauai, and Molokai-Lanai as the situation may require. Such representatives shall be appointed by the Military Governor upon recommendation of the Commanding Generals of the respective districts acting as District Representatives of the Military Governor.

3. Plans and Operations.

3.01. Director of Plans and Operations. Under the direction of the Military Governor, the Director of Plans and Operations will make plans for, and control, coordinate, and supervise the activities

Respondent's Exhibit No. 16—(Continued)

of, such functional sections of the Office of the Military Governor as the Military Governor may direct and designate from time to time.

3.02. Director of Cargo and Passenger Control. In order to expedite the handling of all shipments at all Territorial ports, the Director of Cargo and Passenger Control is hereby directed to coordinate all port facilities.

3.03. Authority of Director of Cargo and Passenger Control. The Director of Cargo and Passenger Control will, to the extent directed by the Military Governor:

Supervise, coordinate and regulate dockage and stevedoring; barges, tugs, and floating equipment; the loading and discharging of fuel, including the use of fuel lines; transportation and other facilities necessary to expedite the handling of cargo and passengers; and the disposition of all cargo until removed from the dock area at all docks and wharves in the Port of Honolulu and in other Territorial ports;

Supervise, coordinate, and regulate, in accordance with priorities set by civilian agencies and transmitted to the Director of Cargo and Passenger Control by the Director of Plans and Operations, the allocation to vessels of all commercial cargo; and, in accordance with advice of the Army Transportation Corps, all Army cargo and vessels offered for shipment out of the Territory or between the islands;

Organize and set up an Assistant Director of

Respondent's Exhibit No. 16—(Continued)

Cargo and Passenger Control, together with such added personnel as the Military Governor may authorize, at each of the outlying ports of the Territory, to carry out the operations prescribed above.

3.04. Section of Labor Control. Under the direction of the Director of Labor Control, this section shall administer all matters pertaining to labor as promulgated by the Military Governor in General Orders No. 10, this office, 10 March, 1943, and any amendments or additions thereto.

3.05. Labor Control Board. A Labor Control Board hereby is created to investigate and arbitrate such labor disputes as may arise under the provisions of General Orders No. 10, this office, 10 March 1943, and any amendments or additions thereto, as well as such other labor disputes as may be referred to it by the Military Governor, and shall recommend to the Military Governor such labor policies as it shall deem advisable for the successful prosecution of the war effort.

This Labor Control Board shall consist of seven members as follows:

Director of Labor Control, Chairman

One (1) representative of the U. S. Army

One (1) representative of the U. S. Navy

Two (2) representatives of the American Federation of Labor

One (1) representative of the Congress for Industrial Organization

One (1) representative of industry, appointed on recommendation of the Honolulu Chamber of Commerce.

Respondent's Exhibit No. 16—(Continued)

The decisions of this Labor Control Board shall not be final until approved by the Military Governor.

4. Central Identification Bureau.

4.01. The Central Identification Bureau will operate under a director appointed by the Military Governor and is charged with the registration of persons and the issuance of means of identification as required by the provisions of General Orders No. 8, this office, 10 March 1943, and any amendments or additions thereto.

5. Appointments.

5.01. The following appointments to the offices indicated hereby are made:

Major General James A. Woodruff, U.S.A., Director of the Central Identification Bureau;

Colonel B. F. Hayford, F. A., Director of Plans and Operations;

Commander Ernest Gray, U.S.N.R., Director of Cargo and Passenger Control;

Mr. John R. Mead, Director of Labor Control;

Mr. Alfred E. Tree, Military Property Comptroller;

Lieutenant Dwight H. Lowrey, Inf., Internee and Evacuee Property Coordinator.

5.02. The following officers are hereby designated District Military Property Comptrollers and also District Internee and Evacuee Property Coordinators in their respective districts:

Major William P. Crum, F.A., District of Kauai;

Major John D. Hagon, F.A., District of Maui;

Respondent's Exhibit No. 16—(Continued)

Major Thomas E. G. Paradine, Inf., District of Hawaii.

6. Location of the Office of the Military Governor.

6.01. The Office of the Military Governor of the Territory of Hawaii shall be located at Iolani Palace, Honolulu, T. H.

6.02. An Office of the Military Governor shall also be maintained in each district, including the Hawaii District, the Kauai District, the Maui District, and the Molokai-Lanai District, at such location as may be designated within the district by the Commanding General of each district acting as District Representative of the Military Governor.

By order of the Military Governor of the Territory of Hawaii.

THOMAS H. GREEN

Brigadier General A.U.S.

Executive

[Seal]

WILLIAM R. C. MORRISON

Colonel, J.A.G.D.

Assistant Executive

[Endorsed]: Filed 4-20-44.

[Endorsed]: No. 10774. United States Circuit Court of Appeals for the Ninth Circuit. Wm. F. Steer, Colonel, Infantry, United States Army, Provost Marshal, Central Pacific Area, Appellant, vs. Harry E. White, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Territory of Hawaii.

Filed May 12, 1944.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 10774

In the Matter of

HARRY E. WHITE

APPELLANT'S STATEMENT OF POINTS
ON APPEAL

The judgment of the District Court ordering the discharge of the appellee from custody upon a writ of habeas corpus was erroneous in that:

I. The pleadings consisting of the petition for a writ, order to show cause why a writ should not issue, the return and answer to the petition, to the order to show cause and to the return, and the traverse disclose that the privilege of the writ of habeas corpus was lawfully suspended and martial

law lawfully existed pursuant to public proclamations of the Governor of the Territory of Hawaii issued pursuant to the Organic Act of the Territory; and that pursuant to such martial law the appellee had been convicted by a military court and was imprisoned and detained by appellant for the violation of the Law of the Territory involved herein; and therefore it appeared upon the pleadings that a writ of habeas corpus should not have issued, and appellee should not have been released on bond pending a hearing, and should not have been discharged.

1. The writ should not have been issued.

2. The appellee should not have been released on bond prior to a determination of the case.

3. Under the Organic Act the suspension of the privilege of the writ and martial law promulgated by the Governor with the approval of the President and continued by further Proclamation of the Governor, continues until promulgation of its termination by the President, or by the Governor with the approval of the President, and could not be terminated by the District Court.

II. Upon the hearing and trial on the pleadings it was established that there was a reasonable basis for the judgment that imminent danger of invasion requiring the continued suspension of the privilege of the writ and existence of martial law and that there was no basis for invalidation of that judgment by the District Court; that the privilege of the writ lawfully continued to be suspended and martial law continued in existence and the appellee was lawfully

detained pursuant to martial law and could not lawfully be released upon a writ of habeas corpus.

1. The executive authorities which proclaimed martial law and the suspension of the privilege of the writ have the power to terminate martial law and the suspension of the privilege of the writ and in the circumstances of this case the judicial authorities do not have such power.

2. There was a rational basis for the honest judgment and determination that there was imminent danger of invasion and that the suspension of the privilege of the writ and the existence of martial law should be continued and in the absence of fraud or caprice the District Court lacked power to invalidate that judgment.

3. Even if the privilege of the writ was not suspended, martial law existed and the appellee's discharge should have been refused on the merits on the ground that he was lawfully detained under martial law.

III. Apart from the suspension of the privilege of the writ and the existence of martial law generally or in other cases or at any other time after December 7, 1941, the particular application of martial law here involved in August 1942, trial by a military tribunal for violation of the law of the Territory here involved at that time and in time of war was lawful and required by military necessity and the privilege of the writ was suspended in such case and even if not suspended, the writ should have

been refused or discharged on the merits and the appellee should not have been discharged.

G. D. CROZIER,

United States Attorney, Dis-
trict of Hawaii,

EDWARD J. ENNIS,

Special Assistant to the At-
torney General,
Attorneys for Appellant.

[Endorsed]: Filed May 19, 1944. Paul P.
O'Brien, Clerk.

CLERK'S COPY.

Vol. III

TRANSCRIPT OF RECORD

(Pages 705 to 753)

Supreme Court of the United States

OCTOBER TERM, 1945

No. 15

HARRY E. WHITE, PETITIONER,

vs.

WM. F. STEER, COLONEL, INFANTRY, UNITED
STATES ARMY, PROVOST MARSHAL, CENTRAL
PACIFIC AREA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED DECEMBER 29, 1944.

CERTIORARI GRANTED FEBRUARY 12, 1945.

No. 10774

IN THE

**United States Circuit Court of Appeals
For the Ninth Circuit**

**WM. F. STEER, Colonel Infantry, United States
Army, Provost Marshal, Central Pacific Area,
Appellant.**

vs.

HARRY E. WHITE,

Appellee,

**Upon Appeal from the District Court of the United States
for the Territory of Hawaii.**

**PROCEEDINGS HAD IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT**

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Saturday, July 1,
1944.

Before: Wilbur, Garrecht, Denman, Mathews and
Stephens, Circuit Judges.

[Title of Cause.]

ORDER OF SUBMISSION

Ordered appeal herein argued by Mr. Edward J. Ennis, Director, Alien Enemy Control Unit. Department of Justice, counsel for appellant, and by Messrs. Ebert J. Botts and Fred Patterson, counsel for appellee, and on oral stipulation of said counsel, submitted to Wilbur, Garrecht, Denman, Mathews, Stephens and Healy, Circuit Judges, for consideration and decision, with leave to file Law Review Articles.

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Wednesday, November 1, 1944.

Before: Wilbur, Denman, Stephens and Healy,
Circuit Judges.

[Title of Cause.]

**ORDER DIRECTING FILING OF OPINIONS,
AND FILING AND RECORDING OF DECREE**

By direction of the Court, Ordered that the typewritten opinions this day rendered by this Court in above cause be forthwith filed by the clerk, and that a decree be filed and recorded in the minutes of this Court in accordance with the opinions rendered.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 10,763

In the Matter of the Application of Lloyd C.
Duncan, for a Writ of Habeas Corpus.

DUKE PAOA KAHANAMOKU, Sheriff, City and
County of Honolulu,

Appellant,

vs.

LLOYD C. DUNCAN,

Appellee.

No. 10,774

November 1, 1944

In the Matter of the Application of HARRY E.
WHITE, for a Writ of Habeas Corpus.

WM. F. STEER, Colonel, Infantry, United States
Army, Provost Marshal, Central Pacific Area,
Appellant,

vs.


HARRY E. WHITE,

Appellee.

OPINIONS

Upon Appeal from the District Court of the United
States for the Territory of Hawaii

Before: Wilbur, Garrecht, Denman, Mathews,
Stephens, and Healy, Circuit Judges.



Healy, Circuit Judge

The appeal in each of these cases is from a judgment of the United States District Court for the Territory of Hawaii sustaining a petition for a writ of habeas corpus and ordering the discharge of the petitioner.

In case No. 10,774 the essential facts are as follows: Appellee Harry E. White is a citizen of the United States and of the Territory of Hawaii. On August 20, 1942, while engaged in Honolulu as a civilian in a brokerage and investment business, he was arrested and brought before Major Murrell, judge of the provost court, who informed him that he was to be tried before that court on a charge of embezzlement growing out of the conduct of his business, in violation of Chapter 1831, Revised Laws of Hawaii, 1935. He was on August 25, 1942 tried by the provost court upon that charge, without a jury, was convicted and sentenced to imprisonment for a term of five years. The sentence imposed was within the limits prescribed by the territorial statute.

On April 14, 1944, White filed his petition in the court below for release on habeas corpus, asserting lack of jurisdiction in the provost court and claiming that he had been deprived of the rights guaranteed by the 5th and 6th Amendments. The court issued a show cause order directed to the warden of Oahu Prison. It was later ordered, on stipulation, that Colonel Steer, Provost Marshal of the Central Pacific Area, and then custodian of the petitioner, be substituted as respondent in lieu of the warden.

The Provost Marshal filed an answer in which he admitted the facts as stated above but denied that the trial and imprisonment were unlawful. The answer contained affirmative matter, alleging, among other things, the suspension of the privilege of the writ, the declaration of martial law, and the existence as of August 1942 of an emergency necessitating the trial of civilians by a provost court as provided in the then subsisting orders of the commanding general; and it was asserted that the offense of which the petitioner had been convicted was not cognizable in the civilian courts because of the terms of the Governor's proclamation of December 7, 1941.

The petitioner, by traverse, put in issue the allegations of the answer. Thereupon the writ was issued, the petitioner was produced and evidence taken. It was stipulated that the return to the order to show cause be considered the return to the writ of habeas corpus, and that the traverse to the return to the show cause order be considered the traverse to the return to the writ. Being of opinion that the provost court was without lawful authority to try the charge, the court ordered petitioner's release from custody.

The facts in case No. 40,763 are these:

Appellee Lloyd C. Duxean is a citizen of the United States living temporarily in the Territory of Hawaii, where he was in the civilian employ of the Navy Department at Pearl Harbor. On February 24, 1944, while within the limits of the naval

reservation where he was employed, he assaulted and struck with his fists two marine corps sentries on duty at the main gate. Later he was summoned to appear before the provost court on the charge of assault with intent to obstruct the sentries in the lawful performance of their official duties, contrary to paragraph 8.01 of General Orders No. 2 of the Military Governor, dated March 10, 1943. He was tried by the provost court without a jury, was found guilty of the charge and was sentenced to serve a jail term of six months. He was then delivered into the custody of appellant, the sheriff of the city and county of Honolulu, and was confined by the latter in the Honolulu jail. Petition for the writ was filed March 14, 1944, and an order to show cause served on appellant the same day.

The sheriff made a return admitting the fact of the charge and conviction. The return alleged, in substance, that the public safety has at all times since December 7, 1941, required the continued existence of martial law and the suspension of the writ as proclaimed by the Governor of the Territory; that the General Orders referred to, respecting the establishment and authority of provost courts, were necessary for the successful prosecution of the war; and that the military action of punishing persons assaulting sentries engaged in the performance of their duty, with intent to hinder such performance, was not unreasonable or arbitrary.

As in the White case, the allegations of the return were formally put in issue by traverse. After hear-

ing argument the court issued the writ and the sheriff produced the petitioner. It was stipulated that the government's return to the order to show cause should stand as the return to the writ. There followed a trial at which testimony was taken bearing upon the truth of the situation as developed in the several pleadings. At its conclusion the court entered judgment discharging the petitioner from custody. The grounds given for the discharge were that martial law did not prevail in the Territory and that the provost court was without authority to try the petitioner.

As will later appear, there are substantial differences between these cases; but underlying each are the same fundamental questions, namely, (1) whether the court was in error in holding that the petitioner was unlawfully imprisoned, and (2) whether, in any event, the court was foreclosed from inquiring into the legality of the detention because of the suspension of the privilege of the writ. The points are discussed in the briefs in the order named. However, before considering the first point it will be convenient at the outset briefly to notice the second.

1. Availability of the writ. In *Ex parte Zimmerman*, 132 F. 2d 442, we held that the privilege of the writ of habeas corpus was lawfully suspended in the Territory by the Governor's proclamation of December 7, 1941, issued with approval of the President. It was thought by the trial court that the suspension was subsequently terminated by a proc-

lamation of the Governor issued with Presidential approval on February 8, 1943.

We do not agree. Without going into the matter in detail it is for present purposes enough to say that the later proclamation was not intended to terminate the suspension and did not have that effect. However, in view of the conclusion we have reached in respect of the legality of the imprisonment in each case, it is unnecessary to consider whether the emergency existing in the Territory as of the time of the filing of the petitions was such as to warrant the then suspension of the writ. Nor, for the same reason, is it essential to inquire into the applicability of the suspension to these particular cases. Compare *Ex parte Quirin*, 317 U. S. 1, 24, 25. For the purpose of the decision we assume, without deciding, that the court was not disabled from entertaining the petitions.

2. Legality of the imprisonment. The Governor's proclamation of December 7, 1941, in addition to suspending the writ, placed the Territory under martial law. The latter step, no less than the first, was authorized by the express language of § 67 of the Hawaiian Organic Act as is developed more at length in *Ex parte Zimmerman*, *supra*.¹ The step,

¹ So far as here pertinent, § 67 of the Organic Act provides: "The governor shall be responsible for the faithful execution of the laws of the United States and of the Territory of Hawaii within the said Territory, and whenever it becomes necessary he may call upon the commanders of the military and naval forces of the United States in the Territory of Hawaii, . . . to prevent or suppress lawless violence,

as there said, had the immediate approval of the President.

By the terms of the proclamation Governor Poin-dexter called upon the commanding general, "during the present emergency and until the danger of invasion is removed, to exercise all the powers normally exercised by me as Governor." He further authorized the commanding general, "and those subordinate military personnel to whom he may delegate such authority, during the present emergency and until the danger of invasion is removed, to exercise the powers normally exercised by judicial officers and employees of this Territory and of the counties and cities thereon, and such other and further powers as the emergency may require." The people of the Territory were admonished to obey the proclamation and such rules and orders as the commanding general might issue. Responding to the proclamation, General Short at once assumed the post and title of Military Governor, and his successor, General Emmons, did likewise.

Invocation of the military power could hardly have been more complete. As interpreted by the executive and as applied by the commanding generals, the term "martial law" was here accepted as meaning nothing less than total military govern-

invasion, insurrection, or rebellion in said Territory, and he may, in case of rebellion or invasion, or imminent danger thereof, when the public safety requires it, suspend the privilege of the writ of habeas corpus, or place the Territory or any part thereof, under martial law until communication can be had with the president and his decision thereon made known." 31 Stat. 153, §67, 48 USCA §532.

ment. From that time forward until March 10, 1943, the Territory appears to have continued under exclusive military rule.

By General Orders No. 4, issued December 7, 1941, General Short set up military commissions and provost courts with power "to try and determine any case involving an offense committed against the laws of the United States, the laws of the Territory of Hawaii or the rules, regulations, orders or policies of the military authorities." All civil courts were closed at that time. By General Orders No. 57,² issued January 27, 1942, the local courts were authorized "to exercise certain of the powers normally exercised by them during the existence of civil government." This regulation provided that "the United States District Court for the Territory of Hawaii, the Supreme Court of said Territory, and the justices thereof, the circuit courts, circuit judges at chambers, land court, juvenile court, tax appeal court and the district magistrates are hereby authorized, as agents of the Military Governor, to exercise their respective functions according to law, as it existed immediately prior to the declaration of martial law," subject to numerous restrictions. Among these were prohibitions against the exercise of jurisdiction of criminal cases and the empaneling of grand or petit juries.

The judicial status indicated by Order No. 57 appears to have persisted without material change

²This order supplemented General Orders No. 29, issued December 16, 1941.

until March 1943. It would be a perversion of the truth to say that the courts were "open" during this period—certainly they did not function as a co-ordinate or independent branch of the government. So far as they were permitted to operate they did so "as agents of the Military Governor." Like existing civil officials of all grades throughout the Territory, the courts were mere instruments of the commanding general. Moreover, because of the prohibition against the assembling or empaneling of juries they were wholly disabled from trying criminal cases in the constitutional sense.

We intimate no criticism of what was done. Without doubt Governor Poindexter, the President, and the Generals in command proceeded in the bona fide belief that the establishment of complete military rule was a course dictated by necessity. Nor are the courts entitled to set themselves up as boards of strategy to judge, after the event, whether the belief was warranted by the emergency.³ Certainly they may inquire no further than to consider whether the executive proceeded on reasonable grounds.⁴

We need comment but briefly on the dangers inherent in the Hawaiian situation or on the military importance of this exposed area. The Islands form the key outpost in the country's Western bastion of defense. As is now known, the surprise attack on Pearl Harbor was so devastating and the destruction wrought so nearly complete as to put

³*Hirabayashi v. United States*, 320 U. S. 81, 93.

⁴*Sterling v. Constantin*, 287 U. S. 378.

the Islands in peril of actual seizure by the task forces of a powerful and determined enemy. While immediate steps were taken to convert Hawaii into a fortress, and while the Japanese ultimately met with vigorous opposition in other parts of the Pacific, the perils which beset this strategic area did not vanish overnight. It is the opinion of responsible military and naval authorities that as late as the spring of 1944 the Islands continued in imminent danger of attack from the air, of submarine forays and commando raids from the sea.⁵

Governmental and military problems alike were complicated by the presence in the Territory of tens of thousands of citizens of Japanese ancestry besides large numbers of aliens of the same race.⁶ Obviously the presence of so many inhabitants of doubtful loyalty posed a continuing threat to the public security. Among these people the personnel of clandestine landing parties might mingle freely, without detection. Thus was afforded ideal cover for the activities of the saboteur and the spy. In sum, the situation was such that informed leadership would be answerable at the bar of history if it presumed to take unnecessary chances.

But, it is said, there was no disorder in the Islands, and the courts were ready to function if only

⁵General Richardson and Admiral Nimitz so testified on the hearing below. They stressed, also, the various considerations outlined in this portion of the opinion.

⁶According to the record, 32.36% of the total population of Hawaii in 1940 was comprised of persons of Japanese ancestry or nativity.

they were permitted to do so. Remembering the conditions which we have described the argument does not impress us. To function in criminal matters the civilian courts must assemble juries; and citizens of Japanese extraction could not lawfully be excluded from jury panels on the score of race—even in cases of offenses involving the military security of the Territory. Indeed the mere assembling of juries and the carrying on of protracted criminal trials might well constitute an invitation to disorder as well as an interference with the vital business of the moment. And the summary punishment of criminal offenders of every sort might conceivably serve to discourage the commission of offenses immediately endangering the general security.

The question, then, is not whether the temporary administration of criminal justice by military tribunals was warranted by the emergency, but whether such a displacement of the judicial power can fairly be said to fall within the term "martial law," as that term is generally understood⁷—more particularly as it was employed in §67 of the Organic Act. Presumably Congress intended to authorize the institution by the Governor, with Presidential approval, of such measures of military control as might be thought necessary to deal with

⁷Consult Wiener, *A Practical Manual of Martial Law* (1940), 10, where the author says: "In its broad sense, martial law is the carrying on of government in domestic territory by military agencies, in whole or in part, with the consequent supersession of some or all civil agencies."

any situation possible of occurrence in this remote archipelago, the turbulent history of which was fresh in the minds of the legislators. The emergency arising as the result of insurrection or invasion, or the imminent threat of either, might be of brief duration. Conceivably it might persist for a long time. If, in the latter event, it should become necessary to close or restrict the functioning of the civilian courts, the administration of ordinary criminal justice could not proceed except through the medium of military tribunals. Congress can not be thought to have intended that the suppression or punishment of crime must await the return of tranquillity or the resumption of civil authority.

The framers of the Act took verbatim from the Constitution of the Republic the provision authorizing the suspension of the writ and the placing of the Islands under martial law in the named contingencies.⁸ Five years before its adoption by Congress that provision had been interpreted by the Supreme Court of the Republic in the case of *In re Kalaniana'ole*, reported in 10 Hawaii 29 (1895). The decision, we think, throws important light on the intent of Congress as later given expression in the law providing for the organization of the Territory.

The case of *Kalaniana'ole* arose out of a local insurrection which had been quickly suppressed. The courts were closed during its continuance and were

⁸The provision was contained in Article 31 of the Hawaiian Constitution.

not soon restored to the unobstructed exercise of their jurisdiction. Martial law had been declared by the president of the Republic and a military commission set up for the trial of such persons as might be brought before it. Kalaniana'ole was tried and convicted by the commission on the charge of misprison of treason, an offense denounced by a statute of the Republic and normally triable only in the civil courts. His petition for release on habeas corpus, addressed to the Supreme Court of the Republic, was denied, the court holding that he was lawfully imprisoned pursuant to the judgment of the military commission. It was thought that the setting up of the commission and the trial by it of civilian offenders was an incident of the institution of martial law, hence was impliedly authorized by Article 31 of the Constitution.⁹

We think little is to be gained by a review or an extended citation of the general authorities dealing with the subject of martial law.¹⁰ The term "martial law" appears, indeed, incapable of exact defini-

⁹The opinion in the case was written by Justice Frear, later Governor of the Territory.

¹⁰The authorities have been collected by law writers in recent articles undertaking to discuss the subject in the light of the present emergency and are readily available to the general reader. Cf. Charles Fairman, *The Law of Martial Rule and the National Emergency*, published in *Harvard Law Review*, June 1942; Archibald King, *The Legality of Martial Law in Hawaii*, Vol. XXX *California Law Review*, Number 6, September 1942. Consult generally, Wiener, *A Practical Manual of Martial Law* (1940).

tion.¹¹ It is probably just to say that the term, consistently with constitutional principles, comprehends every measure necessary to preserve the life of the state and to repel the enemy. It must not be forgotten that a cardinal purpose for which the federal constitution was set up was to "provide for the common defense."

In *Ex parte Milligan*, 71 U. S. 2, 127, the majority of the court recognized that in circumstances where the courts are actually closed there is necessity to furnish a military substitute in the administration of ordinary criminal justice for the duration of the emergency. The constitutional guarantees of indictment and trial by jury do not extend to such a situation, for, as said in *Ex parte Quirin*, 317 U. S. 1, 39, while presentment by grand jury and trial by jury were familiar machinery for criminal trials at the time of the adoption of the Constitution, the procedures were unknown to military tribunals. "The latter," said the Court, "are usually called upon to function under conditions precluding resort to such procedures." The Court

¹¹Consult, for example, the discussion of Chief Justice Chase in his concurring opinion in *Ex parte Milligan*, 71 U. S. 2, at p. 141. In important respects his definition of the term is unsatisfying. In the year 1857 Attorney General Cushing remarked on "the extreme want of preciseness" with which the subject had been discussed by common law authorities and commentators. These, he said, afforded "no clue to what martial law, as understood in England, really is;" and he observed that in this country the situation was "even worse." 8 Opinions Attorney General 365, 367, 368.

added that "it was not the purpose or effect of §2 of Article III, read in the light of the common law, to enlarge the then existing right to a jury trial."

At the time appellee White was tried complete martial rule was in effect and the civil courts were disabled from functioning. The situation necessitated his trial by the military. Moreover, authority for such procedure is implicit in the act of Congress providing for the organization of the Territory.

We turn now to the case of appellee Duncan.

The legal situation in the Islands at the time of his trial differed markedly from that earlier prevailing. In January 1943 a conference was held in Washington, participated in by Governor Stainback of the Territory, the Secretary of the Interior, the Secretary of War, and the Attorney General. The conference resulted in the issuance by Governor Stainback, on February 8, 1943, of a proclamation which had the prior approval of the President. This document proclaimed that on the thirtieth day thereafter the Governor of Hawaii and the other civilian officers and agencies of the federal, the territorial, and the local governments, would resume their respective jurisdictions, functions, and powers, according to law, with respect to a very great number of matters, and others necessarily related thereto.¹² It is said that the proclamation had

¹² In passing, it is important to note a provision to the effect that "nothing in this proclamation shall operate to invalidate any conviction . . . which occurred or shall occur prior to the thirtieth day hereafter."

the effect of restoring all but a minor part of the civil authority.¹³ The resumed functions included "judicial proceedings, both civil and criminal," except (1) criminal prosecutions against members of the armed forces; (2) civil suits against members of the armed forces in respect of any act or omission certified by the commanding general to be in the line of duty; and (3) criminal prosecutions for violations of military orders.

For immediate purposes, the pertinent exception to the resumption by the civil courts of full criminal powers is the one relating to "criminal prosecutions for violations of military orders." The proclamation, according to its terms, became effective March 10, 1943. On that date commanding General Richardson issued General Orders No. 2,¹⁴ one paragraph of which provided in part that provost courts and military commissions should have jurisdiction and power to try any case involving a violation by a civilian of the rules, regulations, proclamations, or orders of the military authorities, nor of the laws of war.

Paragraph 8.01 of these orders provided, in substance, that no person shall commit "an assault or an assault and battery" on any member of the military police or other military or naval personnel.

¹³In the trial below Governor Stainback testified that in his opinion about 95% of the civil powers were restored.

¹⁴These were intended as a revision of all previous general orders to conform to the changed legal situation.

"with intent to resist, prevent, hinder, or obstruct him in the discharge, execution or performance of his duties as such." No specific penalty was prescribed for a violation of the prohibition except that elsewhere in the order it is stated that the provost court will be guided, but not bound, by the penalties prescribed by the laws of the Territory in like cases. It was under paragraph 8.01 that Duncan was tried in the provost court in February of the following year.

Whether this provision of General Orders No. 2 was valid as applied to civilians poses a question of unusual delicacy and importance. The General Orders, as well as the proclamation of the Governor, proceeded on the express assumption that a state of martial law was to continue in effect. The proclamation, however, did not purport to render the civil authority thereafter subordinate to the military. The contrary, indeed, was to be the case in respect of all powers resumed. The courts were no longer to operate as agencies of the general in command; clearly, they were intended to function as a coordinate branch of the civil government which Congress had provided for the Territory. Thenceforward they were open. They were in full possession of the power to empanel grand and petit juries and were not in terms disabled from proceeding in the traditional manner to the trial of any criminal offense denounced by Hawaiian laws.

The first point to be noticed is that the conduct proscribed by paragraph 8.01 of the General Orders

is beyond the scope of the Articles of War.¹⁵ It affects civilians in no way connected with the military or naval forces, and therefore not normally amenable to military discipline. Again, there is no specific act of Congress authorizing the promulgation of the regulation or confirming its validity by making the violation of such a military order a criminal offense. Congressional authority can be looked for only in the provision of the Organic Act authorizing resort to martial law.

It is to be recalled that in respect of the military control of Japanese resident on the Pacific Coast, Congress felt it appropriate to denounce as a misdemeanor any infraction of the pertinent military orders relating to their control and removal; and offenders were made subject to trial exclusively in the civil courts. See Act of March 21, 1942, 56 Stat. 173; cf. *Hirabayashi v. United States*, 320 U. S. 81. It is true that martial law had not formally been proclaimed in the affected area; but a state of qualified martial law nevertheless existed there more drastic in certain of its aspects, than that prevailing in Hawaii during the period now in question. However, as later pointed out, we think it is not a necessary consequence of the congressional policy manifested in this instance that appropriate military orders affecting civilians are invalid in the absence of express legislative sanction.

The law of Hawaii defines the offense of assault and battery and prescribes penalties for its viola-

¹⁵10 USCA §§1471-1593.

tion.¹⁶ There is a territorial statute imposing a much heavier penalty for the commission of "an assault or an assault and battery on any public officer, civil or judicial, with intent to resist, prevent, hinder or obstruct him in the discharge or execution of his duty as such."¹⁷ There is however, no statute punishing a battery of that aggravated nature committed upon personnel of the armed forces, while acting in the line of duty; and it was the latter offense that was proscribed by the regulation under which Duncan was tried.

It is clear that the civil courts were without jurisdiction to try one accused of an offense of this character, unknown, as it was, to Hawaiian law. In the absence of enabling legislation their powers extended no farther than to try those accused of offenses denounced by statute. In sum, even in the absence of the prohibition contained in the Governor's proclamation, they were not competent to try Duncan for the offense with which he was here charged. It thus becomes necessary to consider whether the military were competent to define such conduct as an offense and proceed to the trial and punishment of one accused of it.

¹⁶Revised Laws of Hawaii 1935, C. 166, §§5651, 5659.

¹⁷Revised Laws of Hawaii 1935, C. 166, §5657. The penalty prescribed is a fine of one thousand dollars or imprisonment for not more than one year. The penalty for simple assault and battery, as prescribed by the statute relating thereto, is a fine of not more than one hundred dollars or imprisonment for not more than six months.

The condition of emergency existing in the Islands has already been noted. It was testified by General Richardson and by Admiral Nimitz that these conditions prevailed as late as March and April of 1944. In the opinion of these responsible commanders the danger of attack and invasion, if less serious and pressing than before, still continued imminent. They characterized the Hawaiian area as an integral part of the theatre of actual military operations in the Pacific. General Richardson expressed the belief that the continuance of martial law, to the extent it was then in effect in the Territory, was necessary not only for the safety of the Islands but for the defense of the nation. That the President and the Governor were of the same opinion is evidenced by the proclamation, one provision of which, as has been seen, contemplated the continued prosecution in the military courts of those accused of the violation of military orders.

In *Hirabayashi v. United States*, supra, at page 93, the Court observed that the war power of the national government extends to every matter and activity so related to war as substantially to affect its conduct and progress. "The power," said the Court, "is not restricted to the winning of victories in the field and the repulse of enemy forces. It embraces every phase of the national defense, including the protection of war materials and the members of the armed forces from injury and from the dangers which attend the rise, prosecution, and progress of war. [citing cases] Since the Con-

stitution commits to the Executive and to Congress the exercise of the war power in all the vicissitudes and conditions of warfare, it has necessarily given them wide scope for the exercise of judgment and discretion in determining the nature and extent of threatened injury or danger and in the selection of the means for resisting it. [citing cases] Where, as they did here, the conditions call for the exercise of judgment and discretion and for the choice of means by those branches of the Government on which the Constitution has placed the responsibility of war-making, it is not for any court to sit in review of the wisdom of their action or substitute its judgment for theirs."

In emergencies arising out of total war there are fields in which civilian conduct is necessarily impinged upon by regulations of the military, even in areas which are not regarded as part of the theatre of actual warfare. Of this we have had during the existing emergency many familiar examples, such as regulations concerning blackouts, dimouts, curfews, and the like—all of them recognized as essential to military security. The power to punish infractions of military regulations of this type must of necessity reside somewhere. If it has not by legislation or municipal ordinance been delegated to the ordinary courts or made subject to the authority of the civil police, the power must perforce exist in the military arm of the government acting through the medium of commissions or like tribunals.

Paragraph 8.01 of the General Orders is a regu-

lation of this type. As seen, it had no counterpart in the statutes of the Territory. Nor was there statute or ordinance in existence making the infraction of it an offense triable in the courts. It can hardly be doubted that the provision was a reasonable measure. We are not able to say that, under the conditions shown to exist in this vital area, an assault upon a sentry or a member of the military police with intent to obstruct him in the discharge of his duty, was an offense of so little consequence to the public security that it called for no punishment at all or that its punishment in the civil courts as a simple battery was adequate to meet the needs of the hour. That Duncan's offense was of this aggravated nature the record does not admit of doubt.

Whether, in the situation prevailing in the Islands since March 1943, the military are competent to define and punish ordinary civilian offenses punishable as of course in the civilian courts is a question that is not before us.

There was nothing in the showing made in either of these cases which would warrant release on habeas corpus on grounds having to do with the fairness of the trials in the provost courts. Nor did the court below make any finding of unfairness in the conduct of the trials. The writs should have been discharged and the petitioners remanded to custody.

The judgments in both cases are reversed.

Garrecht, concurring.

I concur in the opinion of Judge Healy.

Wilbur, Circuit Judge, concurring:

I am authorized to say that Judge Mathews joins me in this opinion. We concur in the opinion of Judge Healy concerning the effect and existence of martial law in the Territory of Hawaii and in the conclusion that the appellees should be returned to the custody of the respective appellants.

We also concur in the conclusion stated in the opinion of Judge Healy, that the proclamations hereinafter referred to were not intended to terminate the suspension of the privilege of the writ and did not have that effect. We further hold that such changed conditions as had occurred in the Territory did not restore the right to the writ of habeas corpus. This conclusion on this matter would also require that the appellees be restored to the custody from which they were taken under the writ of habeas corpus and the orders discharging them from custody be reversed.

We deem it desirable to state this additional ground for reversal of the orders of the trial court because the undetermined nature and effect of martial law whether exercised by virtue of the necessities of war or under express authorization, constitutional or statutory, is a matter of great doubt when sought to be applied in individual instances, as in the cases at bar. The right to suspend the privilege of the writ of habeas corpus is derived directly from the Constitution of the United States. Such suspension is also authorized by the organic law of the Territory of Hawaii, and the power is sought to be broadened by that law to situations

where there is imminent danger of invasion as well as actual invasion, although the two phrases are probably of identical significance when reasonably interpreted.

We now consider the rights of the appellees with reference to the suspension of the writ of habeas corpus.

The trial judge, feeling himself bound by previous decisions of the United States District Court for the Territory of Hawaii, announced that the privilege of the writ of habeas corpus was not suspended at the time of the appellees' application. This conclusion was based upon the proposition that the order suspending the privilege of the writ had been set aside by subsequent orders, as will be presently stated. Our discussion of the subject is shortened by the fact that we have already considered and decided, in *Ex parte Zimmerman*, 132 F. 2d., 442, the question as to whether or not the privilege of the writ of habeas corpus was suspended in Hawaii from and after December 7, 1941, and if so, the effect of such suspension. We there held, Judge Healy writing the opinion, that for the reason that the suspension of the writ precluded such action, the court was powerless to release from custody a citizen of the United States detained by the military authorities in Hawaiian Territory. The facts with relation to the various proclamations and orders suspending the privilege of the writ are set out in that opinion and need not be here repeated. Suffice it to say that it was there held that the Territory of Hawaii was invaded by the Japanese on

the morning of December 7, 1941; that the proclamation of the Governor of the Territory of Hawaii, approved by the President of the United States, lawfully suspended the privilege of the writ as authorized by section 67 of the Organic Law of the Territory of Hawaii, passed April 30, 1900 (31 Stat. 153). The Constitution of the United States, Article I, section 9, clause 2, provides: "The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it." We start then with the proposition heretofore determined by this court, that the proclamation of the Governor suspending the privilege of the writ of habeas corpus and declaring martial law, approved by the President of the United States, was valid and binding on the courts. If the privilege of the writ is still suspended, then under our decision in *Ex parte Zimmerman*, *supra*, the action of the trial court must be reversed and the appellees remanded to the custody of the appellant where he had been placed by the military authorities.

The appellees' claim that the privilege of the writ of habeas corpus is no longer suspended in the Territory of Hawaii is based upon two distinct propositions: First, that it was officially ended by appropriate proclamation on February 8, 1943, and, second, that even if there was no such formal restoration as a matter of fact the necessity for martial law and the suspension of the writ has ceased and, therefore, by reason of such changed conditions

martial law no longer exists and the suspension of the writ is no longer effective. We shall first consider the contention with reference to the restoration of the privilege of the writ by proclamation of February 8, 1943.

On that date the Governor of the Territory of Hawaii issued a proclamation declaring the partial suspension of martial law and it is claimed that the proclamation also, in legal effect, reestablished the privilege of the writ of habeas corpus, although not specifically declared. The proclamation of February 8, after stating: "Whereas, a state of martial law remains in effect and the privilege of the writ of habeas corpus remains suspended", proceeds to restore civilian officers and agencies of the federal territorial and local governments to their "respective jurisdictions, functions and powers" concerning, among other things "judicial proceedings both criminal and civil", with certain exceptions which are not of present concern. Governor Stainback, who issued the proclamation, testified that in his opinion it restored at least 95 per cent of civil authority. That the proclamation was not intended to effect the suspension of the privilege of the writ of habeas corpus is clear from what preceded, and what was contemporaneous with, the proclamation of the Governor. The proclamation resulted from a conference held in Washington, D. C., in which the Governor of the Territory of Hawaii, the Secretary of the Interior, the Secretary of War, and the Attorney General, joined in discussions and agreements leading to the approval

by the President of the proposed proclamation of February 8, 1943, and to its promulgation. In the joint letter to the President of January 18, 1943, submitting to him the agreement above referred to, it was said:

"Pursuant to this agreement the Governor of Hawaii and the Commanding General will issue simultaneous proclamations. Their effect is to leave unchanged the state of martial law and the suspension of the writ of habeas corpus, to restore to the civil government the majority of civil functions hitherto exercised by the military authorities, and to provide emergency powers for the military government."

The letter of the President dated February 1, 1943, addressed to the Secretary of War, acknowledged the receipt of the proposed proclamation to be issued concurrently by the Commanding General and the Governor of Hawaii and approved the same, stating: "In an area of such strategic importance as the Hawaiian Islands in a time of active war in the Pacific, I can readily appreciate the difficulty in defining exactly the boundaries between civil and military functions. I think the formula which this proclamation applies meets the present needs."

When Governor Stainback returned to Hawaii he issued the proclamation in accordance with the agreement above referred to and concurrently therewith published a statement which, among other things, says: "After numerous conferences among representatives of the War, Justice, Interior De-

partments and myself, it was agreed that martial law should be continued in Hawaii but that existing military control should be modified to restore to a large extent civilian control of civilian matters. My proclamation is the result of this agreement.

"Under the Act of Congress the Governor is 'responsible for the faithful execution of the laws of the United States and of the Territory' within the Territory. On December 7, 1941, the Governor of Hawaii issued a proclamation placing the Territory under martial law, which proclamation was subsequently modified by me on September 2nd, 1942. This proclamation issued today continues martial law and the suspension of the privilege of the writ of habeas corpus but modified those prior proclamations by restoring to the civil authorities jurisdiction in their respective fields over civilian affairs except for certain specified subjects which are primarily of military concern."

It seems perfectly clear that the Governor, who is vested with the power to declare martial law and to suspend the privilege of the writ of habeas corpus under section 67, *supra*, had no intention of restoring the privilege of the writ. It is a matter of doubt and undetermined whether or not the suspension of the writ, having been approved by the President and thus made an act of the President of the United States, could be restored by the unapproved action of the Governor. It is not necessary to determine this question for the reason that it is clear that the proclamation of the Governor, with the accompanying statement, shows that

he had "no intention of vacating the order which suspended the privilege. We conclude that so far as the proclamation of February 3, 1943 is concerned, the privilege of the writ of habeas corpus remains suspended.

As to the second point as to the effect of changed conditions, the trial court having concluded that the privilege of the writ of habeas corpus was restored by proclamation, its attention was directed to the question of the effect of the changed conditions upon the proclamation declaring martial law which had only been revoked in part by the proclamation of February 8, 1943. As to the part of the proclamation purporting to continue in force a part of martial law, the argument is that as there is no longer danger of invasion, imminent or otherwise, the necessity for martial authority in the Territory has passed; consequently, the court need no longer recognize the authority of the military to detain the appellee in custody, which was merely an incident of the necessity of martial law. (This argument is based upon the decision of the Supreme Court in *Ex parte Mulligan*, 71 U. S. 1) No case is cited and none is found in which it is held that a change of condition alone would result in the restoration of the privilege of the writ of habeas corpus. But even if such were true the record does not disclose such a situation as would justify the application of such a rule, if it exists. A great deal of the testimony was directed to the military situation in the Territory at the time of trial and

the trial court found as a fact that "while the Island of Oahu may have been on March 2, 1944, and thereafter to this day, subject to possible attack by enemies at war, that it was not then, nor is it now, in imminent danger of invasion by hostile forces, neither was or is it in rebellion." The trial court found as a fact that the civil government was in efficient operation.¹

In support of the claimed necessity for continued maintenance of partial martial law, Lieut. General Richardson of the United States Army, in command of that area, and Admiral Nimitz of the United States Navy, in charge of the naval operations through the Pacific, each testified that in his opinion the continuance of martial law was necessary in the Territory of Hawaii for the protection of the territory and the of United States. The trial judge notwithstanding their opinions and orders, concluded that there was no danger of invasion and no continued necessity for martial law and ordered the appellee released. We thus have diametrically opposed views of the situation by the General and Admiral responsible for the defense of the Hawaiian Territory, and also for the defense of the United States, and of the judge who had no responsibility

¹"I find from the evidence that at all times during the year 1943 and continuing to this day, conditions were such throughout all the principal islands of the Territory of Hawaii that the regularly constituted civil government was either in efficient operation or fully capable of such operation in all its branches and ordinary departments and was sufficiently equipped, capable and willing to perform all functions for which it was created."

therefor. Under such circumstances the question is not difficult of solution, for it has been held by our Supreme Court in *Moyer v. Peabody*, 212 U.S. 78, decided in 1909, that the federal court had no jurisdiction of an action for false imprisonment against the Governor of the State of Colorado who had seized and imprisoned the plaintiff Moyer for 76 days and had suspended the privilege of the writ. The court said:

“It is admitted, as it must be, that the Governor’s declaration that a state of insurrection existed is conclusive of that fact. It seems to be admitted also that the arrest alone would not necessarily have given a right to bring this suit. But it is said that a detention for so many days, alleged to be without probable cause, at a time when the courts were open, without an attempt to bring the plaintiff before them, makes a case on which he has a right to have a jury pass. * * * So long as such arrests are made in good faith and in the honest belief that they are needed in order to head the insurrection off, the Governor is the final judge and cannot be subject to an action after he is out of office on the ground that he had not reasonable ground for his belief. * * * Public danger warrants the substitution of executive process for judicial process.”

It would seem clear from this decision, as well as from principle, that the decision as to whether or not the continued suspension of the writ was necessary was one entirely for the executive authorities, if made in good faith and upon an honest belief. We shall examine that question for a moment.

Was the situation such that an executive could

say that the continued suspension of the privilege of the writ of habeas corpus was necessary?

Considering this question we not only have in evidence the public acts and declarations of a military Governor and of Admiral Nimitz, who are in charge of that area, but we also have their testimony under oath in this habeas corpus proceeding. Lieutenant General Robert C. Richardson, in response to the following question gave the following answer:

“Q. Now, General Richardson, based upon your appraisal of the military situation, will you state your opinion as to whether or not there is imminent danger of invasion of this Territory by the Japanese enemy?

“A. I shall state from a soldier's point of view the actual reality of the situation, without attempting to argue or define the academic definition of ‘imminent danger of invasion.’ We know that, at least we feel quite certain that the Japanese are totally incapable of coming to these islands with a large land-based force for the purpose of seizing and capturing it. We do not think that is within their capability at all. The time for that is past. And, therefore, if that interpretation is paramount in the mind of the layman, it may be eliminated. But you must remember that in law, as in other branches and other professions, times change. There are new developments. When that phrase was written, ‘imminent danger of invasion,’ nor [neither] the submarine, nor the airplane were in existence,

nor were they ever dreamed of. These two new weapons of war have enormous potentialities, and they have introduced into warfare the element of stealth, the element of surprise, and the element of speed. And, therefore, capitalizing on these new elements of warfare, our enemy, the Japanese, has at his disposal today a strong carrier force, destroyers, cruisers, battleships, and airplanes, and submarines, all of which combine those elements of stealth, surprise and speed.

"Therefore, they still have the capability of launching an attack, an invasion by air, an invasion by undersea, against these islands. And they have not only the capability itself; it is always impending, as long as their capability exists, the danger impends and the danger is imminent."

Admiral Chester W. Nimitz, United States Navy, Commander-in-Chief Pacific Fleet and Pacific Ocean areas, testified as follows:

"Q. Will you state, Admiral Nimitz, in a general way the strategic position of this Territory as part of your general command?

"A. The Hawaiian area constitutes the only base for the Navy that we have in the Pacific Ocean at the present time. It has the greatest importance to the fleet and to the Army for operations to the westward. Anything that is injurious to this area is prejudicial to our conduct of the war.

"Q. Do you believe, Admiral Nimitz, as a military matter or as a naval matter, that the Japanese enemy might or could attack these islands?

"A. Yes, they could. It is still within their capability to make carrier attacks behind the front, in spite of the daily searches that we make. We have never ceased, since December 7th, to search the areas from which we think those attacks are likely to come. Until the last Japanese carrier is destroyed, that capability will exist.

* * *

"Q. Admiral Nimitz, in addition to the possibility of an attack by carrier-based planes, are there other military factors, major factors to be considered in determining the possibility of an attack by the Japanese on this Territory?

"A. Yes. The Japanese can land commando raiders, espionage parties, in spite of any reasonable preventive efforts that we make. And in the information that they might possibly obtain would be—in my opinion—could be more injurious to our cause than if they came to these islands and established a beachhead on one of them. The information that they *might as* to prospective movements of our fleet, the presence of our fleet in these waters, or its absence, the deductions that might be made from the information they pick up mingling with the Japanese of the community might very well cause some of our operations in the far west, far westward of here, to be unsuccessful.

"Q. Well, in other words, do you agree with General Richardson's testimony that protection of these Naval operations to the westward from premature disclosure is a vital factor in your operations?

"A. It is of the utmost importance, and the security against espionage activity in these islands is of the utmost importance.

"Q. Admiral Nimitz, having in mind your duties here and your responsibility, and from your study of the situation, would you state whether or not, in your opinion, there is imminent danger of invasion of the Territory of Hawaii by the Japanese?

"A. Invasion by sea-borne troops in sufficient numbers to seize a bridgehead, no. I consider it neither imminent nor probable. But invasion by stealth, by submarine, commando raids, espionage parties, I consider it not only probable but imminent. It is constantly impending.

"Q. And what is your view on invasion by carrier-borne aircraft?

"A. I cited that in a previous answer, that it is possible, if the Japanese wish to take the risk; they have sufficient carriers and sufficient planes to make an attack on these islands similar to the one that they made on December 7th."

In considering the danger of surprise referred to by both the General and the Admiral, it should be noted that the testimony shows that an advantage of a few minutes may be decisive in modern warfare.

The Supreme Court in *Ex parte Milligan*, 71 U.S. 3, was dealing with a situation in which Con-

² The report of the Navy Department of December 5, 1942, states that all the anti-aircraft guns of the naval vessels at Pearl Harbor were in action within seven minutes after the attack at 7:55 a.m.

gress had provided that the suspension of the writ should not be effective where there was a failure to indict the petitioner within a time fixed by statute. The case, therefore, dealt not with the effect of the suspension of the writ but rather with the right to try the petitioner by military tribunal during the period in which he was held by the military authorities. The Supreme Court held that the military authorities were without jurisdiction to try the petitioner and that the decision of the military court was void for that reason, the court holding that the situation did not justify the application of martial law in violation of the expressed will of Congress to the contrary. The court in that case divided upon the question of whether or not Congress, under the Constitution, could authorize trials other than by jury under the circumstances disclosed in that record. This decision will be of importance in weighing the effect of the judgment of the provost court in this case, a question which we hold is not before us.

Assuming as we do for the purpose of this opinion, without deciding, that the court can ignore an order suspending the privilege of the writ of habeas corpus as to persons held in custody by the military authorities when such suspension is so arbitrary, capricious and unreasonable as to justify an inference of fraud on the part of the military authorities, we hold that in view of the existence of a global war in which this nation is involved and from the facts shown in evidence in the court below, the

courts cannot say the decision of the military authorities or of the Governor of Hawaii to continue such suspension is so arbitrary, capricious or fraudulent as to justify the courts in ignoring the action of the military authorities and ordering the release of persons in their custody. The decision of the trial court based upon its own independent judgment of necessity for the continued suspension of the privilege of the writ of habeas corpus, while supported by direct evidence of a number of witnesses, including Governor Stainback, does not go far enough to sustain its order because it ignores the opinion of the military authorities to the contrary and does not find facts justifying its order. Without a finding of implied fraud on the part of the Governor and of the military authorities the decision cannot be sustained.

The appellees also claim that even if the writ of habeas corpus has been and now is suspended within the Territory of Hawaii, such suspension does not apply to the type of offense committed by the appellee. The appellees contend that: "The Constitution contemplates a suspension of the privilege of the writ only in cases of persons engaged in aiding the rebellion or invasion." The Constitution provides no such limitation and we see no reason for its application. Such an interpretation of the Constitution would leave open the question in every case as to whether or not the conduct of the persons detained by the military authorities came within the exception.

The decisions should be reversed and the trial court directed to return the appellees to the custody of the respective appellants.

Denman, Circuit Judge:

I concur in the orders for the discharge of the writs but dissent from deciding the constitutional question of the jurisdiction or power of the court to issue the writs. This is because the petitions for the writs on their faces fail to show the petitioners belong to the class of persons entitled to the constitutional privilege of the writ of habeas corpus—that is, those alleging their illegal imprisonment.¹ These clearly are cases in which should be applied the principle that, if possible, a case must be decided on other than constitutional grounds.

The constitutional question presented in the appellants' points on appeal in both cases is stated as follows:

“I. The pleadings² consisting of the petition

¹ 28 U.S.C.A. § 455. “Allowance and direction. The court, or justice, or judge to whom such application is made shall forthwith award a writ of habeas corpus, unless it appears from the petition itself that the party is not entitled thereto. The writ shall be directed to the person in whose custody the party is detained.

² It is suggested the petitions become *functus officio* on the issue of the writs. It was stipulated in the Duncan case that the return to the order to show cause made before the writ was issued shall be deemed a return to the writ. In such a situation the issue is fixed by the petition for the writ and the return to the writ which here joins issue with

for a writ, order to show cause why a writ should not issue, the return and answer to the petition, to the order to show cause and to the return, and the traverse disclose that the privilege of the writ of habeas corpus was lawfully suspended and martial law lawfully existed pursuant to public proclamations of the Governor of the Territory of Hawaii issued pursuant to the Organic Act of the Territory;..."

In Judge Wilbur's opinion the constitutional question so presented as to whether the military orders legally deprived the appellees of the privilege of the writ is not only entertained but decided in favor of the appellants. In Judge Healy's opinion it is assumed that the constitutional question is decided adversely to the appellants. If his excellent opinion could be construed as holding the constitutional question entirely ignored, I would concur in it.

It is my view that the petitions on their faces, taken in connection with facts judicially to be noticed, show no facts invoking the jurisdiction or

the petition. *Whitten v. Tomlinson*, 160 U.S. 231, 242. Cf. *Hamméer v. Huff*, 110 F. 2d 113, 114-115 (C.A. D.C.). A similar stipulation was made in the *White* case, where the return to the writ also expressly admits some of the allegations of the petition and denies others, particularly its assertion that no danger of invasion existed. In no sense could it be said that the petition became *functus officio* on the issuance of the writ. I do not believe *Barth v. Clise*, 12 Wall. 400, 402 so holds. If it does, it is overruled by *Whitten v. Tomlinson*, *supra*.

power of the district court to issue the writs; that the court should have proceeded no further than to determine that it had no such power; and that it was error in both cases to proceed with hearings on the orders to show cause—all the more so to decide or assume the decision of the question of the existence of the right in the respective petitioners to the constitutional privilege of the writ.

Briefly stated, the fatal defects of the petitions in both cases are that they rest on the assertions, later more fully considered, that no danger of invasion actually existed at any pertinent times warranting the suspension of the writ, whereas there is no allegation of the sole fact necessary to sustain the petitions, namely, that at none of the pertinent times did the military authorities have reasonable grounds to believe the existence of such danger. As later discussed, the military could have such a belief though no such danger in fact existed. Incidentally, though it seems irrelevant, petitioners did not mend their holds by later pleading. No such allegation appears in the traverses to the returns to the orders to show cause.

Merely because persons are imprisoned does not *prima facie* give them the right to invoke the power of the court or judge to issue writs of habeas corpus in their behalf. *Ex Parte Quirin*, 317 U.S. 24. The class of persons to whom the constitutional privilege is extended consists of those "unlawfully de-

prived of their liberty;"³ The petitions on which the instant proceedings rest on their faces show the petitioners are imprisoned on judgments military in character, not unlawful when made nor since become unlawful. The petitions no more show the petitioners belonging to the class having legal interests entitling them to raise the question of the military orders denying to them their constitutional privilege of the writ, than the litigants in many cases have brought themselves within the class having legal interests entitling them to a decision of other constitutional questions. *Chicago Board of Trade v. Olsen*, 262 U.S. 1, 43; *Blair v. United States*, 250 U.S. 273, 279; *Plymouth Coal Co. v. Pennsylvania*, 232 U.S. 531, 545; *Municipal Investors v. Birmingham*, 316 U.S. 153, 155.

White's petition fails to state a cause for the issuance of the writ. White's petition alleges that he was convicted by the Provost Marshal's court of the crime of embezzlement and sentenced to five years' imprisonment in Oahu Prison, where he is confined in the custody of appellant, respondent below. The conviction was on August 25, 1942, within three months of the Battle of Midway, in which engagement two or more large fleets of Japanese war vessels steaming toward the Hawaiian Islands were defeated near the Island of Midway. It could not be contended that there was no Japan-

³ As stated in *McNally v. Hill*, Warden, 293 U.S. 131, 138, "Without restraint of liberty, the writ will not issue . . . Equally, without restraint which is unlawful, the writ may not be used."

ese Navy left for a second attempt to invade the Hawaiian Islands.

It is further alleged that on December 7, 1941, the Governor of Hawaii had declared martial law and authorized the Commanding General of the Hawaiian department and his subordinates to exercise the powers normally exercised by the judicial officers of the Territory. It is not contended that this order was invalid when made, *Ex parte Zimmerman*, 132 F. 2d 443, but a mere conclusion of law is stated "that said martial law ceased to exist legally in the Territory prior to said August 25, 1942, when he was tried as aforesaid before said Provost Court."

The petition does not, and could not allege that the civil courts were open and functioning at the time of trial and sentence, but alleges no more than that they were able and ready to perform their normal functions and duties. As showing the fact supporting the legal conclusion that "martial law [had] ceased to exist legally," it is further alleged that no "such imminent danger of invasion by an enemy force existed as to warrant or justify the denial to petitioner of a trial and hearing before the proper courts in and of the Territory of Hawaii."

As stated, what makes the petition fatally defective⁴ is the absence of any allegation that at the

⁴ This court in *Ex Parte Zimmerman*, 132 F. 2d 442, 446, a case involving the same question, in holding that the petition failed to state facts em-

time of the trial and conviction on August 25, 1942, the military authorities had no reasonable ground to anticipate or believe that there was a danger of invasion or other military necessity requiring the exercise of all the judicial powers by the military and the denial of the exercise of any judicial power by the civil authorities.

All that is alleged is that in the after-wisdom of March 31, 1944, nineteen months later, no such danger of invasion or military necessity for the exercise by the military of judicial power over non-military offenses in fact existed on August 25, 1942.

It is entirely possible that history will show that long before the petitions were filed the Japanese military authorities regarded the invasion of the Hawaiian Islands as impossible and never enter-

powering the district court to issue the writ, stated the rule as

"... It is true that the averments of petitions for this great writ are not scrutinized with technical nicety; but neither are they taken as importing something other than what they say. The courts, in circumstances like the present, ought to be careful to avoid the idle or captious inference."

The petition is not an inartificially drawn document prepared by a petitioner unskilled in the law, but the product of able members of the Honolulu bar. In my opinion, the reason for the absence of any allegation that, on August 25, 1942, the military could not reasonably have entertained the idea of a possible invasion for which they must be prepared and on guard, and thus bring the petition within the Hirabayashi case, *infra*, is because such responsible members of the bar knew such an allegation would be untrue.

tained it at any of the times pertinent to the issues of the petitions.

However, no such after-wise allegations, even if assumed to state the facts, can satisfy the requirement of the allegation of the absence of reasonable ground in the mind of the military commander to apprehend the likelihood of the need to prepare to resist and to resist such an invasion and of the need of such judicial control during such preparation and resistance. *Hirabayashi v. United States*, 320 U.S. 81, 94; *Sterling v. Constantin*, 287 U.S. 378, 399, 402.

Concerning the absence of written notice of the charge of embezzlement, I am in agreement with Judge Healy's statement. In addition no prejudice is shown and, since the evidence is not before us, we may assume that the petitioner himself testified to facts warranting his conviction. Likewise, I am in agreement with Judge Healy's statement regarding the absence of a jury and the character of martial as distinguished from the law of civil courts. White's petition on its face shows no ground for the issuance of the writ of habeas corpus and should have been dismissed on that ground alone.

Duncan's petition fails to state grounds to invoke the privilege of the writ of habeas corpus. Duncan

was convicted on March 2, 1944, of having assaulted, on February 24, 1944, sentries at the main gate of the Pearl Harbor Reservation, while on the Reservation. Here I am in agreement with Judge Healy's statement. In addition judicial notice is taken that in time of war military necessity re-

quires the fullest respect be shown to all soldiers in uniform in the performance of their military duties, a fortiori to the Marine sentries guarding the entrance to Pearl Harbor with its fortifications subject to possible sabotage. Equally clear is the military necessity for prompt punishment by the military itself for the maintenance of its discipline and the self-respect of its members and for the command of that respect by civilians.

Duncan's petition contains allegations similar to those of White's petition concerning the absence of danger of invasion and the military necessity for such exercise of the judicial power by the military. Nowhere are the required allegations of absence of reasonable apprehension of invasion or the absence of reasonable belief of the military necessity for military adjudication of such an offense as assaulting the sentries as here committed. As stated, it affirmatively appears that such military necessity existed.

The petition for the writ should have been dismissed because stating no cause for the granting of the claimed constitutional privilege. It was error to proceed beyond this and permit the pleadings and proof and issuance of the writ which should have been discharged for no other reason than that last above stated.

Stephens, Circuit Judge, did not participate in the decision of these cases.

[Endorsed]: Opinions. Filed Nov. 1, 1944. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 10774

WM. F. STEER, etc.,

Appellant,

vs.

HARRY E. WHITE,

Appellee.

DECREE

Appeal from the District Court of the United States for the Territory of Hawaii.

This Cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Territory of Hawaii and was duly submitted.

On Consideration Whereof, it is now here ordered, adjudged, and decreed by this Court, that the judgment of the said District Court in this cause be, and hereby is, reversed, and that this cause be, and hereby is remanded to the said District Court with directions to return the appellee to the custody of the appellant.

[Endorsed]: Decree. Filed and entered Nov. 1, 1944. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

**CERTIFICATE OF CLERK, U. S. CIRCUIT
COURT OF APPEALS FOR THE NINTH
CIRCUIT, TO RECORD CERTIFIED UN-
DER RULE 38 OF THE REVISED RULES
OF THE SUPREME COURT OF THE
UNITED STATES**

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing three volumes containing seven hundred fifty-one (751) pages, numbered from and including 1 to and including 751, to be a full, true and correct copy of the entire record excluding certain original exhibits of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the appellee, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 24th day of November, 1944.

[Seal]

PAUL P. O'BRIEN,

Clerk.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed February 12, 1945

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(106)

FILE COPY

In the Supreme Court

OF THE
United States

OCTOBER TERM, 1944

No. 92-15

HARRY E. WHITE,

Petitioner,

vs.

WM. F. STEER, Colonel, Infantry, United
States Army, Provost Marshal, Central
Pacific Area,

Respondent.

**PETITION FOR WRIT OF CERTIORARI
to the United States Circuit Court of Appeals
for the Ninth Circuit
and
BRIEF IN SUPPORT THEREOF.**

FRED PATTERSON,

McCandless Building, Honolulu, Hawaii

Counsel for Petitioner.

HERBERT CHAMBERLIN,

Russ Building, San Francisco, California,

E. J. BOTTS,

Stangenwald Building, Honolulu, Hawaii,

Of Counsel.

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In the Supreme Court

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Pacific Area,

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**PETITION FOR WRIT OF CERTIORARI
to the United States Circuit Court of Appeals
for the Ninth Circuit.**

*To the Honorable Harlan Fiske Stone, Chief Justice
of the United States, and to the Honorable Asso-
ciate Justices of the Supreme Court of the United
States:*

Petitioner, Harry E. White, respectfully prays for
a writ of certiorari to the United States Circuit Court

of Appeals for the Ninth Circuit to review the final judgment of said Court entered November 1, 1944, reversing the final judgment of the District Court of the United States for the Territory of Hawaii.

OPINION BELOW.

The District Court's decision is not reported but is found in the record beginning at page 57. The opinion of the Circuit Court of Appeals is unreported to date. It appears in the record in Vol. 3, pages 706-751.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

The United States Circuit Court of Appeals for the Ninth Circuit reversed the decision and judgment of the United States District Court for the District and Territory of Hawaii, in habeas corpus proceedings brought in behalf of Harry E. White, a civilian, confined in Oahu Prison under judgment and sentence of a military court, which tried and convicted him August 25, 1942, for violation of Chapter 183, Revised Laws of Hawaii 1935, viz. embezzlement.

The pertinent facts of the case are: That on December 7, 1941, a few hours after the Japanese attack on Pearl Harbor, the Governor of Hawaii by proclamation invoked Section 67, Hawaiian Organic Act (31 Stat. 1941 (1900) 48 U. S. C. 532), suspending the privilege of the writ of habeas corpus and placed the Territory under martial law. He called on the Com-

manding General to exercise the powers normally exercised by judicial officers and employees of the Territory, during the emergency and until danger of invasion was over (R. 57). The Commanding General assumed the title of "Military Governor" (R. 58) and immediately set up Military Commissions and Provost Courts for the trial of civilians "involving an offense committed against the Laws of the United States, the Laws of the Territory of Hawaii, or the rules, regulations, orders or policies of the military authority * * *" (R. 79).

Harry E. White, who was engaged in the stock brokerage business in Honolulu (R. 5), was accused August 20, 1942, of embezzling funds of a customer; he was arrested and brought before a provost court in Honolulu, presided over by a United States Army Major (R. 5). White challenged the jurisdiction of the provost court (R. 10), demanded a trial by jury (R. 11), and a continuance to prepare his defense (R. 11-13); but to no avail (R. 6-7). He was obliged to go to trial without a formal charge in writing. He was adjudged guilty of embezzlement and sentenced to five years imprisonment (R. 7 and 15).

In habeas corpus proceedings the United States district judge held that the military tribunal had no jurisdiction to try and sentence White for an offense in no way related to military operations or security and that the Governor, in attempting to delegate judicial power to a self-styled "Military Governor", exceeded his authority and the denial to White of his rights under the 5th and 6th Amendments of the Con-

stitution were without legal justification; and he was entitled to the relief prayed for in his petition (R. 57).

From the decision and judgment of the district judge, the provost marshal, respondent, appealed to the Circuit Court of Appeals for the Ninth Circuit, where the trial judge's decision and judgment were reversed and the petitioner remanded (R. 705).

Briefly stated, the decision of the Circuit Court of Appeals held that at the time White was tried, Hawaii was under total military government, and that his trial without benefit of the 5th and 6th Amendments was proper and the proceedings valid; that the privilege of the writ of habeas corpus was still suspended when he sought relief.

JURISDICTION.

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code (43 Stat. 938; 28 U. S. C. A. Sec. 347).

QUESTIONS PRESENTED.

(1) Did the Military in Honolulu on August 25, 1942, have jurisdiction to try a civilian in a provost court for a felony involved in the violation of a municipal law?

(2) Aside from question (1), was petitioner given a fair trial within the meaning of due process, where, brought before the provost court, his counsel ill and

his defense requiring the study of complicated book-keeping entries, he was denied a reasonable continuance to prepare for trial and secure the attendance of witnesses in his favor?

REASONS RELIED ON FOR ALLOWANCE OF WRIT.

- (A) The Circuit Court of Appeals has decided an important question of constitutional law relating to the rights of an individual under the 5th and 6th amendments in war time and has decided the same contrary to a decision of this Court.

The decision of the Circuit Court of Appeals, in reversing the trial Court and holding that Harry E. White, a civilian stock broker in Honolulu charged with violation of a municipal law, viz. embezzlement with respect to a customer's money, was subject to trial and imprisonment by a military court, is in conflict with the decision of this Court in *Ex Parte Milligan*, 4 Wall. (U. S.) 2.

- (B) The Circuit Court of Appeals has given force and effect to a judgment and sentence of a military court, which denied petitioner in his trial rights deemed essential under the due process clause of the Constitution.

The decision of the Circuit Court of Appeals should be reversed, irrespective of whether Harry E. White was subject to trial before a military tribunal, for the reason that he was denied those things deemed essential to a fair trial, included in 'the fundamental principles of justice embraced in the conception of due process of law;'" particularly, to-wit, he was never

**Kwock Jan Fat v. White*, 253 U. S. 454.

confronted with a formal written charge or accusation, under oath or otherwise, against him, and though his counsel was ill and his defense required study of complicated bookkeeping entries, he was arbitrarily denied a reasonable continuance to prepare for trial and to secure attendance of witnesses in his favor.

ARGUMENT.

- (A) **THE CIRCUIT COURT OF APPEALS HAS DECIDED AN IMPORTANT QUESTION OF CONSTITUTIONAL LAW RELATING TO THE RIGHTS OF AN INDIVIDUAL UNDER THE 5TH AND 6TH AMENDMENTS IN WAR TIME AND HAS DECIDED THE SAME CONTRARY TO A DECISION OF THIS COURT.**

Overnight on December 7, 1941, Hawaii changed from a legally constituted government to a military dictatorship, headed by the commanding general of the department, who assumed the title of "Military Governor" and the right to try and punish violators of all penal laws or ordinances and his own orders and "policies". Rights of the individual under the Constitution vanished.

No statutory authority existed for the establishment of such a government. Section 67 of the Organic Act (31 Stat. (1900) 153; 48 U. S. C. 432) was relied on and it was under the provisions of this section that Governor Poindexter suspended the privileges of the writ of habeas corpus and proclaimed martial law (R. 74).

The pertinent provisions of this section are:

"The Governor * * * may * * * in case of rebellion or invasion, or imminent danger thereof, when the public safety requires it, suspend the privilege of the writ of habeas corpus, or place the territory or any part thereof under martial law until communication can be had with the President and his decision thereon made known."

The Circuit Court of Appeals pointed out that the section was taken from the Constitution of the Republic of Hawaii. It will be noted that it is different, in an important particular, from Article I, Section 9 of the Federal Constitution.

In its opinion, the Court relied on *In re Kalani-anaole*, 10 Hawaii 29 (R. 717), which was decided in 1895—five years before the Constitution of the United States was extended to Hawaii—and dealt with the right of a military commission, clothed by a legislative enabling act, to try a principal in a conspiracy to overthrow the Republic under President Dole. The 5th and 6th Amendments and Article I, Section 9 of the Constitution were alien and had no application to the proceeding.

Article I, Section 9 of the Constitution permits the suspension of the privilege of the writ when and only when "*in case of rebellion or invasion the public safety may require it*". Section 67 would permit it not only when there is invasion or rebellion, but when there is *imminent danger of invasion*.

Much of the testimony produced by respondent was to show that at the time this proceeding began, twenty-

eight months after December 7, 1941, there was still imminent danger of invasion and hence legal justification for the suspension of the privilege of the writ. It is submitted Section 67 is valid only to the extent it is not in conflict with Article I, Section 9 of the Constitution and the 5th and 6th Amendments.

The several states in their Constitutions have varying provisions relating to the suspension of the great writ. They are not limited by the restriction of Article I, Section 9 of the Constitution (25 *Am. Jur.* p. 146). But organized territories are. *Rasmussen v. United States*, 197 U. S. 516; *O'Donoghue v. United States*, 289 U. S. 516. An organized territory is directly under the Constitution. Its restraints and restrictions are in full force and effect in Hawaii.

The Circuit Court of Appeals, in reversing the trial Court, said that at the time petitioner was tried, the Territory "appears to have continued under exclusive military rule" (R. 713) but does not point out any legal basis for such rule; whereas the trial Court specifically dealt with this matter, finding that while the Governor had the right and power to declare martial law and suspend the privilege of the writ of habeas corpus, he did not have power to delegate the functions of the duly established Courts of the United States and the Territory of Hawaii to the Commanding General (R. 69).

The basic function of martial law is to preserve order in an emergency and does not embrace the trial of civilians in military or provost courts for offenses wholly alien to the concerns of the emergency.

It is argued, however, in this case, that it was necessary to try petitioner before a provost court because juries at the time were not being impanelled. Such excuse cannot make the proceedings lawful and cannot give legal justification for denying petitioner trial in an ordained and established Court, before a jury and on an indictment found and returned by a grand jury.

When petitioner was arrested and tried the Courts were open and fully staffed and the judges, trained and experienced and serving under appointment of the President of the United States, were ready to perform their proper judicial duties, agreeable to their oath to support and defend the Constitution. But the "Military Governor" would not permit them to function. In their place and stead he created, without the slightest legal authority, provost courts and military commissions (R. 79) who, with astonishing disregard for the great judicial traditions of this country in the administration of justice, proceeded with their inept business in an atmosphere where the enlightened rays of the Constitution's Bill of Rights could never penetrate.

War, it has been said by this Court, does not suspend the safeguards of the Constitution; indeed in time of war their need is greater and a double duty of vigilance devolves on the Court to see they are not lost in the heat and distress of the conflict.

No contention was made that when petitioner was arrested and tried, in August, 1942, there was an invasion, or that there was disorder, or that the Courts were not able to perform their usual functions (R.

49, 53, 129). If the lightning, transit attack on Pearl Harbor on December 7, 1941, may be called an invasion, its existence was only momentary, and not even the commanding general claimed the continued existence of martial law was imperative (R. 264). In such a situation it is inconceivable that a civilian charged with a serious crime against local law should be tried before a military court and shorn of his rightful heritage under the Constitution.

The importance of this case may be gleaned from the fact that this is the first time the army has claimed the right to try and punish civilians on loyal domestic soil for offenses in no way related to military operations or objectives. Reference is made to *Ex parte Duncan*, decided by the Circuit Court of Appeals in the same opinion, for further argument on this phase of the case. Petition for certiorari in that case was filed concurrently with the petition in this case, and it is not believed the convenience of the Court will be served by duplication of the argument.

(B) THE CIRCUIT COURT OF APPEALS HAS GIVEN FORCE AND EFFECT TO A JUDGMENT AND SENTENCE OF A MILITARY COURT, WHICH DENIED PETITIONER IN HIS TRIAL RIGHTS DEEMED ESSENTIAL UNDER THE DUE PROCESS CLAUSE OF THE CONSTITUTION.

Petitioner was put to trial before the provost court for a crime under the Hawaiian law with a ten year imprisonment provision (Chapter 183, *Revised Laws of Hawaii*, 1935)—enough to deprive him “of all that

makes life worth living".* Yet he was confronted with no written charge; was merely told by word of mouth what he was to be tried for (R. 25). *What he was told we do not know, for no record of it was preserved.* Here a step in a criminal proceeding of major importance was being taken, observed not in the usual way of furnishing the accused with a copy of the accusation, but merely by some impalpable words, now lost in oblivion. Requirements of due process cannot be thus easily satisfied. *Kwock Jan Fat v. White*, 253 U. S. 454.

Petitioner, when brought before the provost court, promptly objected to its jurisdiction over him (R. 10); demanded and was denied a jury trial (R. 11). He made a showing that his counsel was ill, that the transactions involved in his difficulties necessitated study of complicated bookkeeping entries, and that a continuance was necessary to prepare his defense (R. 11, 12). But no continuance was allowed him; he was forced to trial (R. 7).

Whether an individual is tried before a legislative Court, a commission, an administrative body or provost court—where the issue involved puts his property or liberty at stake—Courts will denounce a trial or hearing and grant relief where it has been held in such a way or with such undue haste as to prevent a fair presentation of the essential facts, determinative of the issue, or where a full record of what occurred has not been preserved. *Kwock Jan Fat v. White, supra*;

**Ng Fung Ho v. White*, 259 U. S. 276.

Ng Fung Ho v. White, supra; Powell v. Alabama, 287 U. S. 45.

At the hands of whatever agency, a man's vital rights shall be dealt with "*consistent with the fundamental principles of liberty and justice which lie at the base of all our civil and political institutions*". *Herbert v. Louisiana*, 272 U. S. 312; 16 C. J. S. p. 1172.

To give petitioner a trial, and yet not give him an opportunity to prepare for his trial, or not to give him a copy of the accusation, falls far short of "the fundamental principles of justice embraced in the conception of due process of law". *Kwock Jan Fat v. White, supra*.

CONCLUSION.

Wherefore, petitioner respectfully prays that a writ of certiorari be issued to the United States Circuit Court of Appeals for the Ninth Circuit and that the final decree of said cause be reviewed and reversed.

Dated, Honolulu, Hawaii,

December 27, 1944.

HARRY E. WHITE.

Petitioner.

By FRED PATTERSON,

Counsel for Petitioner.

HERBERT CHAMBERLIN,

E. J. BOTTS,

Of Counsel.

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1944

No. 792

15

HARRY E. WHITE,

Petitioner,

VS.

WM. F. STEER, Colonel, Infantry, United
States Army, Provost Marshal, Central
Pacific Area,

Respondent.

On Writ of Certiorari to the United States Circuit Court
of Appeals for the Ninth Circuit.

BRIEF ON BEHALF OF PETITIONER.

FRED PATTERSON,

22 McManis Building, Honolulu, Hawaii.

Counsel for Petitioner.

ROBERT CHAMBERLIN,

1000 Market Street, San Francisco, California.

EDERT J. BOTTS,

Engenwald Building, Honolulu, Hawaii.

Of Counsel.

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BRIEF ON BEHALF OF PETITIONER.

OPINIONS BELOW.

The opinion of the United States district court for the Territory of Hawaii, before which this case was tried, is not printed but is found in the record at page 57.

The opinion of the Circuit Court of Appeals for the Ninth Circuit appears in the record at pages 706-751. It is reported in 146 Fed. (2) at page 576.

JURISDICTION.

Certiorari to review the decree of the Circuit Court of Appeals entered herein November 1, 1944 (R. 751) was granted by this court on February 12, 1945, upon a petition filed therefor December 29, 1944, and based upon Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, Ch. 229 Sec. 1; 43 Stat. 938; 28 U.S.C.A. Sec. 347 (a).

THE QUESTIONS PRESENTED.

This proceeding in habeas corpus was brought to test the legality of the confinement of petitioner in Oahu Prison in Honolulu on a conviction by a provost court on August 25, 1942, for violation of Chapter 183, Revised Laws of Hawaii 1935, viz. embezzlement. Three questions are presented to this court.

The first question is whether the military courts set up in the Territory of Hawaii by a self-styled "Military Governor" had jurisdiction to try a civilian for a felony involving a violation of municipal law which had nothing to do with military operations or objectives, and deny him rights guaranteed under the 5th and 6th Amendments of the Constitution.

The second question is whether the privilege of the writ of habeas corpus was legally suspended on April 15, 1944.

The third question presented is whether the petitioner had a fair trial within the meaning of due process where, brought before the provost court, he

was forced to trial, without a reasonable opportunity to prepare his defense, and without being furnished a copy of the charge or accusation, and no record was kept of what he was told was the charge.

This case and *Ex Parte Duncan*, No. 791, were argued together in the Circuit Court of Appeals for the Ninth Circuit and a single opinion was rendered embracing both cases. Petitions for certiorari were filed in this court in both cases concurrently and granted on the same day. Certain facts and principles of law are common to both cases; but certain facts and principles of law are individual to this case and will be pointed out later and discussed. The brief in *Ex Parte Duncan* deals at length with the facts and principles of law common to both cases, and appellant adopts such parts of the brief in *Ex Parte Duncan* as are common to both cases.

STATEMENT OF THE CASE.

This proceeding was instituted by petitioner to secure his release from Oahu Penitentiary. He was a stockbroker in Honolulu. On August 20, 1942, he was arrested, accused of embezzling funds of a customer. In place of being indicted by the Grand Jury and tried before a jury in the Circuit Court of the First Judicial Circuit, Territory of Hawaii, he was brought before a provost court presided over by a United

States Army officer, and there tried, convicted and sentenced to five years imprisonment (R. 16).

Provost courts and military commissions came into existence in Hawaii on December 8, 1941. On the preceding day—the day Pearl Harbor was attacked by the Japanese, and war was declared—Governor Joseph B. Poindexter had proclaimed martial law and suspended the privilege of the writ of habeas corpus. In doing this he proceeded under the authority of Section 67 of the Organic Act (31 Stat. 153; 48 U.S.C. 532). The material portion of this section reads:

“The Governor . . . may . . . in case of rebellion or invasion, or imminent danger thereof, when the public safety requires it, suspend the privilege of the writ of habeas corpus, or place the territory or any part thereof under marital law until communication can be had with the President and his decision thereon made known.”

In the same proclamation (R. 75) the Governor went farther and took a step unprecedented and beyond the language of the statute. (1) He delegated to the commanding general all powers normally exercised by the governor; (2) he delegated to the commanding general and his subordinates “the powers normally exercised by judicial officers and employees of this territory and of the counties and cities therein, and such other and further powers as the emergency may require.” (R. 75). Though the President was advised of the Governor’s action in declaring martial law and suspending the privilege of the writ of

habeas corpus, the text of the proclamation was not furnished Washington until 1943 and it is doubtful if it was ever seen by President Roosevelt (R. 58).

On the same day General Walter C. Short issued a proclamation in which he advised that he would shortly publish "ordinances governing the conduct of the people of the Territory with respect to the showing of lights, circulation, meetings, censorship, possession of arms, ammunition, and explosives, the sale of intoxicating liquor and other subjects."

He announced: "... Good citizens will cheerfully obey this proclamation and the ordinances to be published; others will be required to do so. Offenders will be severely punished by military tribunals or will be held in custody until such time as the civil courts are able to function." (R. 78).

General Short's first proclamation indicates it was his intention to administer martial law in the territory along orthodox lines. The "ordinances" which he forecast promulgating had a direct relation to the emergency; also he referred to holding defendants who were not dealt with by the military courts "in custody until such time as the civil courts are able to function" (R. 78).

Lieut.-Colonel Thomas H. Green, who became executive officer under the Military Governor, did not share such view. From the beginning (General Orders, No. 4¹—R. 556), he set up a military judicial system to punish civilian offenders as the provost courts saw

¹See Appendix for text.

fit without regard to the limitations of the statute. Indeed, they acknowledged themselves bound by no law of the Territory, no act of Congress, no article of the Constitution. In 1942, 22,480 cases were handled by provost courts in the City and County of Honolulu alone (R. 467). In the month that petitioner was tried, the provost court disposed of 2,801 cases. All were convicted, except for sixteen against whom the charges were dropped for some reason not shown in the record (R. 476).

General Orders No. 4 began with this sentence: "By virtue of the power vested in me as Military Governor, the following policy governing the trial of civilians by Military Commissions and Provost Courts is announced for the information and guidance of all concerned." The Order then proceeded to state that these Military Commissions and Provost Courts would try "any case involving an offense committed against the laws of the United States, the laws of the Territory of Hawaii, or the rules, regulations, orders or policies of the military authorities."

The order further declared that these "courts" would adjudge sentences commensurate with the offense committed. They were not bound by the penalties prescribed by law. Major offenses, the order provided, would be tried by Military Commissions which could "adjudge the death penalty in appropriate cases."

On December 8, 1941, acting under orders of the Commanding General, the Chief Justice posted a notice at the entrance of the judiciary building, an-

nouncing that the courts would be closed until further notice (R. 81).

Eight days later, however, on December 16, 1941, under General Orders No. 2^o, the courts reopened and never closed again (R. 82).

The Military Governor, however, at first restricted their operations to uncontested civil matters (R. 83). On January 27, 1942, he permitted the courts to dispose of civil causes "as agents of the Military Governor" but jury trials and habeas corpus proceedings were still prohibited (R. 86). With this exception, all other judicial functions in the Territory of Hawaii, including trial of criminal cases of every description (without regard to whether the offense was against federal or territorial law or violation of a military order or policy) were handled by provost courts and military commissions.

This situation continued until February 8, 1943. A short time before that, Ingram M. Stainback was appointed governor succeeding Joseph B. Poindexter (R. 48). The new governor found the Army unwilling to relinquish its hold on civilian affairs and in Washington the best he could do in inter-department conferences, without taking the issue to the President (R. 169 and 507), was a compromise under which the territorial government took back control of most of its normal operations and the courts were open for jury trials, civil and criminal; the provost court, however, remained in existence to enforce "orders or policies" of the Military Governor (R. 502). The Army insisted that the proclamation restoring civil

government should state that the privilege of the writ of habeas corpus remained suspended and martial law continued (R. 169).

The Army was reluctant to give up martial law and restore the writ of habeas corpus, not from fear of a Japanese invasion, but because it would end its iron grip on certain classes of labor (R. 170 and 156). Under General Orders No. 10 (R. 674), the Military Governor controlled all employees (a) of the war or navy department, (b) defense workers, (c) stevedores and other dock workers, and (d) public utility employees. An employee who failed to report for work was chargeable with "absenteeism" and punishable "by confinement, with or without hard labor, not to exceed two (2) months or by a fine not to exceed \$200.00, or both such confinement or fine." In the month of February, 1944, in Honolulu 51 persons were brought before the provost court and charged with absenteeism (R. 517).

Though Japanese make up one-third of the population, there was no disorder or sabotage (R. 370). Almost 8,000 Japanese were employed on defense projects (R. 465).¹

To be ready for the emergencies of war a special session of the Legislature in 1941 passed the Hawaii Defense Act (*Act 24 Sp. S.L. of Hawaii, approved October 9, 1941*) which gave the Governor great emergency powers—greater probably than the Governor

¹17,600 Japanese-Americans have been inducted into the Army. Dillon S. Myer, director of war relocation authority, reported March 27, 1945.

of any state possesses (R. 141). General Walter C. Short praised the act highly, predicting it would do away with the necessity for martial law in event of war.¹ When war broke out December 7, the civilian government at least was prepared for it. The organizations created by civilians in anticipation of war came into immediate service (R. 140).

At the time appellant was arrested and tried the Territorial and Federal courts were wide open, fully staffed; their process unimpeded; there was no disorder (R. 129). The Chief Justice of the Supreme Court of Hawaii testified that after the month of April, 1942, he knew of no sound reason for denial of trial by jury to civilians charged with criminal offenses in Hawaii (R. 53). The Governor of the Territory testified that the trial of civilians before military courts for offenses against the laws of the Territory was unnecessary and unjustified by the conditions which existed in the Territory at said time petitioner was charged (R. 49). The Senior Judge of the Circuit Court, a court of record, testified to same effect (R. 128).

When petitioner was brought before the provost court he immediately filed a plea to the jurisdiction (R. 6 and 10), which was denied. He demanded a trial by jury (R. 6 and 11), which was also denied. He then filed a motion for a continuance for time to prepare his defense and advise with counsel. He also showed that his counsel was suffering from an arm injury and under daily treatment from a doctor. He

¹Minutes Senate Committee of the Whole, September 17, 1941.

said that his defense required study of complicated bookkeeping entries and that he needed additional time to go over these entries with his counsel. The motion was overruled and he was forced to trial (R. 26). Respondent admits this (R. 26). It was also shown and admitted that petitioner was never given a copy of the charge or accusation against him. It was claimed he was orally told of the charge (R. 25). What he was told was not shown, for no record of it was kept.

SPECIFICATION OF ERRORS TO BE URGED.

1. The Circuit Court of Appeals erred in holding that the Provost Court, a military tribunal set up in Honolulu by the Commanding General of the department, had judicial power to try and sentence appellant, a civilian, in no way connected with the Army, for violation of Chapter 255, Revised Laws of Hawaii, 1945, viz. embezzlement.

This question was presented below (Pet. for Writ p. 7). The decision of the United States district court specifically held that the military court possessed no judicial power to try and sentence petitioner for an offense against local or domestic law. The Circuit Court of Appeals held that the military court did have such judicial power.

2. The Circuit Court of Appeals erred in holding and deciding that the privilege of the writ of habeas corpus was legally suspended when this proceeding was begun April 15, 1944.

This question was also presented below (Pet. for Writ p. 8). The United States district court held and decided that the privilege of the writ of habeas corpus was not legally suspended when this proceeding began. Circuit Judge Healy, in writing the opinion for the court, did not agree with this conclusion, but held it was not "essential to inquire into the applicability of the suspension" in the case at bar (R. 711). Circuit Judge Wilbur, in a concurring opinion, held that the privilege of the writ was suspended (R. 729).

3. The Circuit Court of Appeals erred in concluding (R. 727) that there was nothing in the showing made in the trial court to entitle appellant to relief on grounds relating to fair trial. Appellant was not furnished with a copy of the charge or accusation and was forced to trial without a reasonable opportunity to prepare his defense.

This question was presented below (Pet. for Writ p. 7). The trial judge, in view of his conclusion that the military court had no jurisdiction over petitioner, found it unnecessary to pass on this question. The Circuit Court of Appeals referred to it, saying there is nothing in the showing made which would warrant relief on the ground of the fairness of the trial in the provost court (R. 727).

SUMMARY OF ARGUMENT.

POINT ONE: *The Circuit Court of Appeals erred in holding that the provost court had jurisdiction over the person and subject matter when petitioner was tried before it August 25, 1942, for the crime of embezzlement.*

(a) The courts of the Territory being open and fully staffed, their process unimpeded, the Army was without right or authority to try petitioner for a violation of municipal law, viz. embezzlement, and to deny him a trial before a jury in an ordained and established court.

(b) All judicial power, properly speaking, is vested by the Constitution in such courts as Congress may from time to time ordain and establish, and Congress placed all judicial power in the enforcement of territorial laws in the Supreme Court and Circuit Courts of the Territory (48 U.S.C.A. 631), and no military court in Hawaii possessed any of such power.

POINT TWO: *When this case began February 15, 1944, the privilege of the writ of habeas corpus was not suspended. An agreement between government officers in settling administrative differences that the writ should remain suspended, is not binding on petitioner or the court where the constitutional basis for suspension does not exist.*

(a) Error was committed by the Circuit Court of Appeals in holding that at the time this proceeding began the writ of habeas corpus was legally suspended, where there was no invasion

and necessity for suspension was not actual and present.

POINT THREE: *Petitioner in his trial before the military court in Honolulu was denied rights deemed essential under the due process clause of the Constitution.*

(a) Petitioner was deprived of a fair hearing before the provost court, where with undue haste and before he could prepare his defense he was forced to trial, without being furnished with a copy of the charge, merely told orally what he was charged with; no record however being preserved of what he was told.

ARGUMENT.

POINT ONE.

THE CIRCUIT COURT OF APPEALS ERRED IN HOLDING THAT THE PROVOST COURT HAD JURISDICTION OVER THE PERSON AND SUBJECT MATTER WHEN PETITIONER WAS TRIED BEFORE IT AUGUST 25, 1942, FOR THE CRIME OF EMBEZZLEMENT.

The primary question here is whether in time of war the Army may take over the trial of civilians for offenses against local law. The question has already been answered in the negative by this court in *Ex Parte Milligan*, 4 Wall. 2, and at least indirectly answered in the recent case of *Ex Parte Quirin*, 317 U.S. 1. See also *Sterling v. Constantin*, 287 U.S. 378. But the Circuit Court of Appeals held that the Army's provost court had a legal right to try and sen-

tence petitioner for embezzlement and reversed the decision of the trial court, after declaring Hawaii was "under exclusive military rule" (R. 713) and had "nothing less than total military government" (R. 712-713). It is thus obvious that the Circuit Court of Appeals considered Hawaii in the same class as a conquered territory. The Army did likewise when the Commanding General assumed the title of Military Governor, with powers to match (R. 172).

It was an injustice to treat Hawaii as a conquered territory. The conduct of the population, quoting the Governor, had been admirable from every point of view and the civil population on December 7 and subsequent thereto "gave a wonderful account of itself" (R. 140).

Hawaii, it will be recalled, did not come into the Union by conquest or purchase. As an independent republic she threw in her lot with her great neighbor, whose form of government and principles she held in esteem and emulated. And when the sudden attack came on Pearl Harbor December 7, she did not fail in her duty. The civil population joined together, united against an enemy.

The basic distinction between martial law and military rule is that the former relates to control of a situation on domestic soil, and latter on foreign.¹

It is submitted that at the time petitioner was tried the courts of the Territory were wide open, fully

¹Wiener, A Practical Manual of Martial Law (1940).
Dowell, Military Aid to Civil Power (1925).

staffed and their process unimpeded. There was no invasion by the enemy and no disorder.

What is it appellee claims? That where the enemy strikes a blow at some military objective in the United States, the State or Territory in which such blow falls may at once be subjected to total military government or rule, not for days or weeks, but for years, vanquishing all rights of the individual under the Constitution.

It cannot be argued that the Territory of Hawaii is in any different position constitutionally speaking than a State. For Hawaii is directly under the Constitution. 31 *Stat.* (1900) 141, 48 *U.S.C.* (1940) 491; *Rasmussen v. U.S.* (1905) 197 *U.S.* 516, 535; *O'Donoghue v. U.S.*, 289 *U.S.* 516.

The Constitution provides:

"... the judicial power of the United States shall be vested in one Supreme Court, and such inferior courts as Congress may from time to time ordain and establish." (Art. 3 Sec. 1).

When the Territory of Hawaii was organized, the Organic Act passed by Congress paraphrased this provision of the Constitution by providing:

"The judicial power of the Territory shall be vested in one Supreme Court and Circuit Courts and such inferior courts as the legislature may from time to time establish." (48 *U.S.C.A.* 631).

The judicial power to try and punish petitioner for the crime of embezzlement was vested by Con-

gress in the Circuit Court of the Territory. The judges thereof are appointed by the President.

The Governor of the Territory under Section 67 of the Organic Act possessed no power whatever to delegate this judicial power to the Commanding General and no other provision of law gave him such authority. Such authority would be inconsistent with our democratic pattern of government.

Said this court in the *Milligan* case:

"Every trial involves the exercise of judicial power; and from what source did the military commission that tried him derive their authority? Certainly, no part of the judicial power of the country was conferred on them, because the Constitution expressly vests it in 'one Supreme Court and such inferior courts as the Congress may from time to time ordain and establish,' and it is not pretended that the commission was a court ordained and established by Congress. They cannot justify it in the name of the president, because he is controlled by law, and has his appropriate sphere of duties, which is to execute, not to make, the laws and there is no unwritten criminal code to which resort may be had as a source of jurisdiction." 4 Wall. 2.

The trial court was correct in saying:

"The precise and only question is, Did the Governor of Hawaii have any judicial power to delegate? If not, the General's acts in reliance thereon were null and void and effected in the White case a denial of his rights under the Fifth and Sixth Amendments. Inferred Presidential approval would avail naught.

"To state the question is to answer it. No citation other than the Organic Act is necessary. Water cannot rise higher than its source. By that Act, in conformity with the nation's democratic pattern the government of Hawaii consists of three separate branches—the legislative, the executive, and the judicial—with neither at any time having the powers of the other two. That Act of Congress has been the law in Hawaii continuously and without interruption since 1900. Under it the Governor had no judicial power to give to the Commanding General on December 7, nor did the General need such in order to discharge his military duties.

"The record prompts the statement that on December 7, 1941, the Governor of Hawaii 'abdicated.' History will treat him more charitably." (R. 69-70).

The opinion of the Circuit Court of Appeals in reversing the trial court cited no case or authority to support its new concept of military power over civilians in time of war. The Circuit Court of Appeals cited no case or authority because there is none. It referred to *In Re Kalanianaʻole*, 10 Hawaii 29 (R. 717) and expressed the opinion that this case, which arose in the days of the Republic, in some way legalized military trials for civilians in Hawaii. The *Kalanianaʻole Case* is not in point. The defendant was a principal in a conspiracy to overthrow the government of the Republic under President Dole and the legislature passed a special enabling act to permit the trial of the conspirator before a military tribunal.

This was five years before the Constitution of the United States was extended to Hawaii. Appellee does not claim any act of Congress conferred judicial power on the provost court that tried petitioner and, of course, no such claim could be made.

Ex Parte Milligan, 4 Wall. 2, has fully answered the question presented here. This decision has appropriately been called "one of the truly great documents of the American Constitution, a bulwark for the protection of the civil liberties of every American citizen."¹ Under either the majority or minority opinion in that case the trial of civilians before a military tribunal in Hawaii was unconstitutional.

The rule established by the majority opinion was that military trials for civilians is without sanction under the Constitution where the courts are open and their processes unimpeded. Manifestly under this rule the trial and punishment of White by a provost court was utterly illegal. And even under the rule suggested by the minority opinion the same conclusion must be reached, for the minority expresses the view that Congress has authority to authorize military tribunals when courts are open if insurrection is probable in the locality or the courts are stricken with disloyalty. In Hawaii there was never any question of insurrection, the conduct of the civil population has been "admirable from every standpoint" (R. 140). No one has even suggested that the courts,

¹John P. Frank, Columbia Law Review, Vol. 14, No. 5, September 1944.

the judges of which are appointed by the President of the United States, are not completely loyal.

The minority opinion suggests Congress has authority under certain circumstances just indicated to authorize military tribunals to try and punish civilians, but it is worthy of note that Congress has never done so. And we believe Congress has never been asked to by a responsible branch of the Government; and certainly in the three years of martial law in the Islands neither the commanding general nor his department asked Congress for authority to administer punitive martial law there. Such a request, we submit, would have been futile. For the trial of civilians before a military court is repugnant to the fundamental traditions associated with the administration of justice in this country; and the history of Congress reflects an unwillingness to embark on such a revolutionary course.¹ Before the *Milligan Case* it was recognized that even in war the civilian was entitled to the benefit of the rights guaranteed him under the Constitution. When Andrew Jackson, as commanding general of the forces in Louisiana, in 1815 suspended the privilege of the writ of habeas corpus and put the entire civil population of New Orleans under martial law, he publicly announced that what he had done was "unknown to the Constitution and laws of the United States", and when the emergency was over and he was brought before court

¹On March 21, 1942, Congress enacted a law for prosecution in civil courts of violators of general defense regulations: 56 Stat. 173 (1942), 18 U.S.C. Pr. 97(a) (Supp. 1943).

to be punished for what he had done, he paid the fine imposed upon him without complaining.¹

Frequently cited and quoted from with approval, this court has never disavowed or modified the rule in the *Milligan Case*.² In both *Ex Parte Quirin*, 317 U.S. 1, and *Hirabayashi v. United States*, 320 U.S. 81, it was referred to and the problem presented in those cases distinguished from the situation in the *Milligan Case*.

How careful the makers of the Constitution were to assure an accused of a proper trial in a proper court and to the benefit of a jury to pass on the question of his guilt is apparent from the language of the great instrument:

“The trial of all crimes, except in cases of impeachment, shall be by jury.” *Art. III, Sec. 2.*

And again the 5th Amendment:

“No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor be compelled in any criminal case to be a witness against himself, nor

¹The True Andrew Jackson, by Cyrus Townsend Brady, p. 45. Life of Andrew Jackson, by John Spencer Bassett, pp. 227-228. *Johnson v. Duncan* (La.) 3 Martin Reports 530.

²In *Ex Parte Quirin*, 317 U.S. 1, the Solicitor General suggested the rule of the *Milligan Case* should be qualified.

be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."

And the 6th Amendment continues:

"In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law; and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for the witnesses in his favor, and to have the assistance of counsel for his defense."

The men who wrote these provisions in the Constitution knew the danger of unlimited and unregulated power and they did everything within their skill to see that the man accused of crime should have a trial surrounded by every possible safeguard of fairness. For when power in an officer is unlimited and unregulated, accusation is tantamount to conviction, and the innocent march with the guilty to prison cells.

The Constitution declares that the trial of all crimes shall be by jury. Two exceptions and two exceptions only were noted, impeachment and cases arising in the land or naval forces. The makers of the Constitution did not attempt to enumerate the different cases in which an accused should have a jury trial, but gave to all. No defendant may be de-

prived of such trial unless included in the exceptions.
Expressio unius est exclusio alterius.

But it is claimed it was necessary to try petitioner before a military court. It was hysteria and not necessity. (Hysteria in the beginning and a labor freeze device later). Necessity had nothing to do with it, for the courts were open and ready to do business. When jurisdiction is usurped necessity or claim of necessity cannot invest the proceeding with validity; in every legal sense it is null and void. Had this been a proceeding to quiet title to land even respondent, we believe, would admit that the judgment would not be worth the paper it was written on. Necessity may be shown to reduce damages when the usurper is proceeded against by one whose rights he has invaded; but that is all.

No such claim was made in England to do away in war time with civil court trials. In London, despite her ordeal in the war and the nearness of the enemy and her resolve to "fight on the beaches, on landing ground, in fields, in the streets and in the hills," there was no martial law and the courts continued jury trials, civil and criminal.²

¹Winston Churchill, in radio address in spring, 1940, reprinted Time, January 6, 1941.

²Defense of the Real Act permits summary trial in civil courts of certain petty offenses involving war regulations. Shortage of available veniremen has caused juries to be reduced in many instances from 12 to 7.

POINT TWO.

WHEN THIS CASE BEGAN FEBRUARY 15, 1944, THE PRIVILEGE OF THE WRIT OF HABEAS CORPUS WAS NOT SUSPENDED. AN AGREEMENT BETWEEN GOVERNMENT OFFICERS IN SETTLING ADMINISTRATIVE DIFFERENCES THAT THE WRIT SHOULD REMAIN SUSPENDED, IS NOT BINDING ON PETITIONER OR THE COURT WHERE THE CONSTITUTIONAL BASIS FOR SUSPENSION DOES NOT EXIST.

As shown in the statement of facts *supra* the Army insisted on a form of modified martial law, as it was called, and continuance of the suspension of the privilege of the writ of habeas corpus, in connection with the proclamation of February 8, 1943, restoring civil government. This, in spite of the fact that all witnesses agreed, including Admiral Nimitz (R. 310) and General Richardson (R. 265), that there was not even a remote possibility of a Japanese invasion of Hawaii. It was conceded there had been no uprising in the Territory and that military force had never been called on to put down riots or mobs. At no time had civil authorities or courts been interfered with or their processes made impotent.

The necessary basis for the suspension of the privilege of the writ under the Constitution (Article 1, Sec. 9) not being present, respondent turned to Section 67 of the Hawaiian Organic Act (31 Stat. (1900) 153; 48 U.S.C. 532). The pertinent provisions of this section are:

"The Governor . . . may . . . in case of rebellion or invasion, or imminent danger thereof, when the public safety requires it, suspend the privilege of the writ of habeas corpus, or place the

territory or any part thereof under martial law until communication can be had with the President and his decision thereon made known."

The Circuit Court of Appeals pointed out that this section was taken from the Constitution of the Republic of Hawaii. It will be noted it is different in an important particular from Article 1, Section 9 of the Federal Constitution. The difference is that while under the Constitution a person may not be deprived of the privilege of the writ except in cases of rebellion or invasion, under Section 67 he may be deprived of it not only when there is rebellion or invasion but when there is imminent danger of rebellion or invasion.

Section 67 therefore accounts for the attempt of respondent to show that though there was no invasion, there was imminent danger thereof. How well he fared may be shown from Admiral Nimitz's testimony. On the witness stand he was asked by respondent if in his opinion there was imminent danger of invasion by the Japanese. He answered: "*Invasion by sea-borne troops in sufficient number to seize a bridgehead, no. I consider it neither imminent nor probable.*" Having in mind no doubt the entry of German spies and saboteurs by submarine on the Atlantic coast, he mentioned that "invasions" of that type are always possible (R. 310).

General Richardson, commanding officer of the department, agreed with Admiral Nimitz: "... We feel quite certain that the Japanese are totally incapable

of coming to these islands with a land-based force for the purpose of seizing and capturing it. We do not think that is within their capability at all. *The time for that is past.*" (R. 265). He realized, of course, as Admiral Nimitz did, that spies, saboteurs or commandos could possibly be landed.

Section 67 of the Organic Act cannot enlarge on the Constitutional limitation for suspending the privilege of the writ. Various states have their own provision dealing with suspension of the writ; they are not bound by the limitations of the Federal Constitution. *Gasquet v. Lapeyre*, 242 U.S. 367. But organized territories are. *O'Donoghue v. United States*, 289 U.S. 516; *Rasmussen v. United States*, 197 U.S. 516. The restraints and restrictions of the Constitution are in full force and effect in Hawaii. Section 5 of the Organic Act (48 U.S.C. 495) expressly extends the Constitution to Hawaii.

Section 5 had its beginning in the Joint Resolution of Annexation of July, 1898. When the Organic Act was introduced in Congress the report of the House committee states that though Section 1891, Revised Statutes, which applied to all territories, would have the effect of extending the Constitution to Hawaii. Section 5 had been included to make assurance double sure.¹

The question of the application of the Constitution to Hawaii first came before this court in *Hawaii v. Mankichi*, 190 U.S. 197. The precise question was

¹H.R. Rep. 305, 56 Congress, 1st Sess. (1900) 10.

whether the Constitution was extended to Hawaii by the Joint Resolution of Annexation of 1898 or by the Organic Act of 1900, the relevancy of the question relating to the requirement of grand juries and trial juries in criminal cases, during this two year interlude. The decision of the court, five to four, held that the Constitution was not extended to Hawaii, with respect to jury requirements; until 1900 when the Organic Act was passed. Justice White, in his concurring opinion, said that by the Organic Act "the Islands were undoubtedly made a part of the United States in the fullest sense." Later decisions of this court have left no doubt on that point. *Carter v. Gear*, 197 U.S. 348; *Rasmussen v. United States*, 197 U.S. 516.

Ex Parte Milligan, 4 Wall. 2, in 1866 declared the rule and fixed the standard for the suspension of the privilege of the writ under the Constitution, and Section 67 of the Organic Act passed in 1900 must be read in that light. Congress knew from that decision when and only when the privilege of the writ could be suspended. The Territory was brought directly under the Constitution, including Article 1, Section 9, and Section 67 is valid only to the extent it is not in conflict with Article 1, Section 9.

In *Ex Parte Milligan*, 4 Wall. 2, this court said: "On her soil there was no hostile foot; if once invaded, that invasion was at an end, and with it all pretext for martial law. Martial law cannot arise from a threatened invasion. The necessity must be actual and present; the invasion real, such as effec-

tually closes the courts and deposes the civil authority."

Petitioner was not a party to the compromise agreement worked out by the Governor and the Army in Washington. The trial judge was not a party and he was free to make a judicial determination, as he did, on the question of whether the privilege of the writ was legally suspended.

While power is given the Governor in the first instance to determine if the privilege of the writ should be suspended, when thereafter one claiming unlawful imprisonment seeks the benefit of the writ, a judicial duty instantly devolves on the court to ascertain if conditions presently existing satisfy the constitutional *sine qua non* for its suspension. As it is the privilege of the writ and not the writ itself which is suspended, the court should issue the writ and make the inquiry on its return (*Ex Parte Milligan*, 4 Wall. 2).

Sterling v. Constantin, 287 U.S. 378, should furnish the full answer to the contention of Judge Wilbur, in his separate concurring opinion, that the suspension of the privilege of the writ of habeas corpus having been initiated by a proclamation will continue suspended indefinitely until restored by proclamation. This would exalt the proclamation over the Constitution, making it supreme. "If this extreme position could be deemed to be well taken, it is manifest that a fiat of a state Governor and not the Constitution of the United States would be the supreme law of the land." *Sterling v. Constantin*, *supra*. This decision

of the Supreme Court places the true value on the proclamation of the chief executive, makes it clear that neither action nor inaction on the part of the Governor with respect to martial law can do away with the background preeminently essential where the privilege of the Great Writ is to be withheld.

Suspension of the privilege of the writ under Article 1, Section 9 of the Constitution does not mean that it is unavailable in *all* cases.¹ Such suspension would not, for instance, bar a parent from recovering his infant wrongfully detained by an individual, or a sane person from seeking release from an insane asylum. The suspension covers all cases related to the affairs of the emergency and is a security measure intended for public safety.

POINT THREE.

PETITIONER IN HIS TRIAL BEFORE THE MILITARY COURT IN HONOLULU WAS DENIED RIGHTS DEEMED ESSENTIAL UNDER THE DUE PROCESS CLAUSE OF THE CONSTITUTION.

Petitioner was charged with embezzlement under Hawaiian law (Chapter 183, Revised Laws of Hawaii, 1935). This crime carries with it a ten year prison provision.

Petitioner was arrested on Thursday, August 20, 1942, and held in jail until Saturday, August 22, when at approximately 2 o'clock in the afternoon he was

¹*The People v. Gual*, 44 Barb. (1865) 98; 39 C.J.S. 794.

brought by an armed member of the Provost Marshal's office before Major Samuel E. Murrell, who was conducting the business of the provost court in the courtroom of the district magistrate (R. 5). Petitioner was told that he was to be tried for embezzlement, but he was never furnished with a copy of the charge or accusation (R. 6). Respondent claims he was orally told (R. 25) but what he was told we do not know for no record of it was kept.

Petitioner promptly entered a written plea to the jurisdiction of the provost court over him (R. 6 and 10), which was denied. He then demanded in writing a jury trial (R. 6 and 11), which was denied. He then moved for a continuance and supported it by affidavit (R. 6-7 and 12-13). This affidavit was made by his attorney, in which he said:

" . . . that the charges in this case were filed Saturday, the 22nd day of August, 1942, and they involve the dealings of a stockbroker with his client, and the matters contained in said charge are kept by book entries from day to day in the business of the defendant. Further, your affiant has been informed by the police that they are investigating certain other transactions involving defendant in his business as a stockbroker. . . . That your affiant has practised law in the Territory of Hawaii for more than twenty years and has actively engaged in the practise of law in the Federal Courts and Territorial Courts and in military tribunals and that in his experience before Naval Courts, United States Courts and Territorial Courts he has never been obliged to go to trial within the short space of time which

has been allowed him in this particular case; and he verily believes and says that this defendant cannot safely go to trial without a more thorough and exhaustive study of the facts surrounding the alleged offense, and that the alleged crime is so peculiar in its nature and is so involved by reason of the bookkeeping and records of the defendant that he feels that the defendant should be allowed further time within which to prepare his defense in this case. Your affiant says that at the present time he is not in a position to properly advise his client on the merits of this particular case. . . .

"Further, your affiant says that he has been visiting the doctor every day for the past ten days on account of an injury received to his arm." (R. 12-13).

The motion for a continuance was denied and petitioner was forced to trial August 25 (R. 7), four days after what served as an arraignment (R. 7). He was convicted and immediately sentenced to imprisonment for five years and *mittimus* issued forthwith (R. 15-16).

Trials before the provost courts in Honolulu were not trials in the sense that they were fair inquiries to ascertain the guilt or innocence of an accused. In civil courts the burden is on the prosecution to prove the guilt of the accused beyond all reasonable doubt and to a moral certainty before the hand of the jailor may be put on him. In these provost courts, for all practical purposes, the rule was exactly the opposite and the accused went to trial prejudiced by an obli-

gation literally to prove his innocence. This is reflected not only in the official report of responsible officials but in the records of the provost courts themselves. For instance, in the month of August, 1942, when petitioner was arrested and tried, there were a total of 2,801 cases brought before the provost court. *Of these all were convicted but sixteen.* In the preceding month 3,295 cases were brought before the military court. *Only eighteen escaped.* In the month following petitioner's trial 1,252 were brought before the court. *Only six got off* (R. 467). How these fortunate few were able to prove their innocence beyond all reasonable doubt and to a moral certainty is not shown by the record. These figures give special point to the official report of the Attorney General of the Territory to the Governor of Hawaii made four months after petitioner's trial:

"In place of the criminal courts of this Territory there have been erected on all the islands provost courts and military commissions for the trial of all manner of offenses from the smallest misdemeanor to crimes carrying the death penalty. Trials have been conducted without regard to whether or not the subject matter is in any manner related to the prosecution of the war. These military tribunals are manned largely by army officers without legal training. Those who may have had any training in the law seem to have forgotten all they ever knew about the subject.

"Lawyers who appear before these tribunals are frequently treated with contempt and suspicion. Many citizens appear without counsel; they know, generally speaking, that no matter what evidence

is produced the 'trial' will result in a conviction. An acquittal before these tribunals is a rare animal. Accordingly, in most cases a plea of guilty is entered in order to avoid the imposition of a more severe penalty. Those who have the temerity to enter a plea of not guilty are dealt with more severely for having chosen that course.

"The accused is not furnished with a copy of the charge against him but is permitted to examine the prosecutor's copy. Trials take place in crowded courtrooms in which the officers in charge are fully armed. The witnesses are brought before the provost judges en masse and stand in a circle about the bench together with the accused. The assemblage tells the judge their views of the matter. Cross-examination of witnesses is tolerated with none too much patience by the court.

"There have been instances in which arrests have been made and the accused kept in jail three or four days awaiting trial, even in the case of comparatively minor offenses. With the writ of habeas corpus suspended the unfortunate accused in such cases is without remedy.

"The 'military governor' has appointed what he styles a coordinator of courts. At the present time this is Captain Edward N. Sylva, who was formerly one of the deputies in this office. I am informed that as cases come in Mr. Sylva makes a determination whether or not they should be tried by the courts of the land or tried before the military tribunals. His determination is final.

"The proceedings in these military tribunals are not only shocking to a lawyer but to anyone with a sense of fair play. Severe and bizarre sentences

are meted out by persons untrained in the law. The feeling of the public is that they are guilty before they step inside the courtroom and their main problem is to escape with as light a sentence as possible."

It has always been the standard practise in Hawaii, in the courts of the Territory and the United States district court, to furnish accused with a copy of the charge or indictment and to give him a reasonable opportunity to prepare his defense. This practise conforms to the general practise prevailing throughout the United States, and is inextricably involved in those rights embraced in the fundamental concept of due process.

In *Chambers v. State of Florida*, 309 U.S. 227, this court interfered in a criminal case in a state court because confessions wrongfully obtained were used against defendant. The fundamental standards of procedure in a criminal prosecution must be observed, said this court. To furnish defendant with a copy of a written charge, that he may know precisely the charge and may demur or otherwise challenge its sufficiency, is also a fundamental standard of procedure. A trial conducted with such undue haste that accused is unable to prepare his defense is as much a violation of the fundamental standards of procedure as the use of a confession wrongfully obtained. In one case by the expedient of haste defendant is deprived of evidence and in the latter case, by the expedient of coer-

¹Columbia Law Review, Sept. 1944, VXLIV, No. 5, p. 652, contained in an able article by John P. Frank, "Martial Law in Hawaii".

cion, evidence is obtained against him. In neither case has he had a fair trial.

In whatever court a man is tried he must be dealt with "consistent with the fundamental principles of liberty and justice which lie at the base of our civil and political institutions." *Herbert v. State of Louisiana*, 272 U.S. 312.

CONCLUSION.

It is submitted on behalf of petitioner that the denial to petitioner of a jury trial and a trial before an ordained and established court in the Territory was without authority of law and that the judgment of the Circuit Court of Appeals should be reversed and final judgment entered in favor of petitioner. Additionally, it is respectfully submitted that the trial and hearing given petitioner in the military court was arbitrary and unfair and on this ground also the judgment below should be reversed and petitioner discharged.

Dated, Honolulu, Hawaii,
September 5, 1945.

Respectfully submitted,

FRED PATTERSON,

Counsel for Petitioner.

HERBERT CHAMBERLIN,

EBERT J. BOTTS,

Of Counsel.

(Appendix Follows.)

Appendix

General Orders No. 4

7 December 1941

By virtue of the power vested in me as Military Governor, the following policy governing the trial of civilians by Military Commissions and Provost Courts is announced for the information and guidance of all concerned:

1. Military commissions and provost courts shall have power to try and determine any case involving an offense committed against the laws of the United States, the laws of the Territory of Hawaii or the rules, regulations, orders or policies of the military authority. The jurisdiction thus given does not include the right to try commissioned or enlisted personnel of the United States Army and Navy. Such persons shall be turned over to their respective services for disposition.

2. Military commissions and provost courts will adjudge sentences commensurate with the offense committed. Ordinarily, the sentence will not exceed the limit of punishment prescribed for similar offenses by the laws of the United States or the Territory of Hawaii. However, the courts are not bound by the limits of punishment prescribed in said laws and in aggravated cases and in cases of repeated offenses the courts may adjudge an appropriate sentence.

3. The record of trial in cases before military commissions will be substantially similar to that required

in a special court martial. The record of trial in cases before provost courts will be substantially similar to that in the case of a Summary Court Martial.

4. The procedure in trials before military commissions and provost courts will follow, as far as it is applicable, the procedure required for Special and Summary Courts Martial respectively.

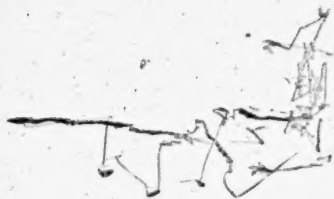
5. The records of trial in all cases will be forwarded to the Department Judge Advocate. The sentences adjudged by provost courts shall become effective immediately. The sentence adjudged by a military commission shall not become effective until it shall have been approved by the Military Governor.

6. All charges against civilian prisoners shall be preferred by the Department Provost Marshal or one of his assistants.

7. The Provost Marshal is responsible for the prompt trial of all civilian prisoners and for carrying out the sentence adjudged by the court.

8. Charges involving all major offenses shall be referred to a military commission for trial. Other cases of lesser degree shall be referred to provost courts. The maximum punishment which a provost court may adjudge is confinement for a period of 5 years, and a fine of not to exceed \$5000.00. MILITARY COMMISSIONS MAY ADJUDGE PUNISHMENT COMMENSURATE WITH THE OFFENSE COMMITTED AND MAY ADJUDGE THE DEATH PENALTY IN APPROPRIATE CASES.

9. In adjudging sentences, provost courts and military commissions will be guided by, but not limited to the penalties authorized by the courts martial manual, the laws of the United States, the Territory of Hawaii, the District of Columbia, and the customs of war in like cases.



THOMAS H. GREEN,
Lt. Col. J.A.G.D.
Executive Officer.

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No. 792 15

In the Supreme Court of the United States

OCTOBER TERM, 1944

HARRY E. WHITE, PETITIONER

v.

WM. F. STEER, COLONEL, INFANTRY, UNITED STATES
ARMY, PROVOST MARSHAL, CENTRAL PACIFIC AREA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE NINTH
CIRCUIT

MEMORANDUM FOR THE UNITED STATES

In the Supreme Court of the United States

OCTOBER TERM, 1944

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WM. F. STEER, COLONEL, INFANTRY, UNITED STATES
ARMY, PROVOST MARSHAL, CENTRAL PACIFIC AREA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE NINTH
CIRCUIT

MEMORANDUM FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the District Court (R. 57) is not reported. The opinions rendered in the Circuit Court of Appeals (R. 706) are not yet reported.

JURISDICTION

The decree of the Circuit Court of Appeals was entered on November 1, 1944 (R. 751). The peti-

(1)

tion for a writ of certiorari was filed on December 29, 1944. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the imprisonment of the petitioner, a civilian, pursuant to a conviction in a military provost court for embezzlement, in violation of the laws of the Territory of Hawaii, is valid under martial law proclaimed by the Governor of Hawaii and approved by the President under the Hawaiian Organic Act (48 U. S. C. 532).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

These are printed in the Appendix to the Government's Memorandum in *Duncan v. Kahana-moku*, No. 791, pp. 25-26.

DISCUSSION

This is a companion case to *Duncan v. Kahana-moku*, No. 791, this Term, in which the Government has filed a memorandum setting forth in detail the background of martial law in Hawaii. Both cases were argued together and decided in a single opinion by the court below. In this case the petitioner, a civilian engaged in the business of stockbroker and investment agent, was convicted on August 25, 1942, in the Provost Court at Honolulu, Territory of Hawaii, for the offense

of embezzlement, in violation of Section 5840 of the Revised Laws of Hawaii (R. 16). He was arrested on August 20, 1942, and advised of the charge against him (R. 5, 25). On August 22, petitioner was brought before the provost court (R. 5-6, 25). His attorney filed a written reply denying the jurisdiction of the Provost Court and demanding a jury trial for the petitioner (R. 10-11). Petitioner also made a motion for continuance of the trial, on the ground that he had not had sufficient time to prepare his defense or to advise with counsel, and on the further ground that the counsel of his choice was visiting a doctor daily on account of an injury to his arm (R. 11-15). The motion for a continuance was denied, and on August 25, 1942, petitioner was tried and convicted of the offense of embezzlement, and was sentenced to imprisonment for five years (R. 15-17, 61). The term was later reduced to four years (R. 61, 482).

On April 14, 1944, a petition for a writ of habeas corpus was filed in the District Court (R. 2), alleging that the petitioner's trial in the provost court was in violation of his statutory and constitutional rights, that the trial was unfair, and that there was no military necessity for trial by a military tribunal (R. 4-9). The respondent's answer to the petition, filed April 18, denied that the trial was unfair, and alleged that military necessity required the trial of civilians,

including the petitioner, by the provost court and that such courts were established by the Commanding General acting as Military Governor in good faith and in the honest belief that military necessity required them (R. 25-33). In his traverse, filed April-18, 1944, the petitioner denied the jurisdiction of the Provost Court to try him for the offense of embezzlement (R. 37-42). On April 18 the writ issued, the petitioner was produced in response to the writ, and was released on bail of \$500.00 (R. 98-100).

On the hearing in this habeas corpus proceeding on April 20, 1944, shortly after termination of the hearing on April 11 in the *Duncan* case, testimony and exhibits in the *Duncan* case were placed in evidence in this case by stipulation (R. 43-57, 100-111). It was stipulated that Admiral Nimitz and General Richardson, if called as witnesses, would testify that their testimony in the *Duncan* case was in their opinion equally applicable with respect to the period from August 20 to 25, 1942, and to the offense here involved (R. 56).

The District Court held that, assuming that martial law was valid, there was no military necessity for the petitioner's trial for the offense of embezzlement in a military court in August 1942, and that the petitioner was therefore being unlawfully imprisoned (R. 67-73). The court below unanimously held that at the time the peti-

tioner was tried complete martial law was in effect, and that the petitioner was lawfully tried by the provost court (R. 720).

The question whether the petitioner was given a fair trial in the provost court (Pet. 4, 10-12) is not presented by the record. The allegation in the petition for a writ of habeas corpus that the provost court trial was unfair (R. 7) was denied in the return (R. 26). At the hearing in the District Court the petitioner introduced no evidence on this issue. The District Court did not rule on this question, although it stated in its decision that this was one of the petitioner's contentions (R. 65). The court below stated that there was nothing in the showing made in the case which would warrant release on habeas corpus on grounds relating to the fairness of the trial in the provost court (R. 727, 749). In these circumstances no question of the fairness of the trial in the provost court would seem to be presented here.

On the question whether the provost court had jurisdiction to try the petitioner for embezzlement, the general considerations set forth in the Government's Memorandum in the *Duncan* case would appear to be applicable here. It may be noted, however, that the offense here involved is not as directly connected with military security as

the offense in the *Duncan* case. The petitioner in this case was tried in the provost court on August 25, 1942, less than nine months after the Japanese attack on Pearl Harbor.

Respectfully submitted.

CHARLES FAHY,

Solicitor General.

HERBERT WECHSLER,

Assistant Attorney General.

EDWARD J. ENNIS,

Special Assistant to the Attorney General.

JANUARY 1945.

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No. 15

In the Supreme Court of the United States

OCTOBER TERM, 1945

HARRY E. WHITE, PETITIONER

vs.

WM. F. STEER, COLONEL, INFANTRY, UNITED
STATES ARMY, PROVOST MARSHAL, CENTRAL
PACIFIC AREA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the District Court (R. 57-73) is not reported. The opinions rendered in the Circuit Court of Appeals (R. 706-750) are reported at 146 F. (2d) 576.

JURISDICTION

The decree of the Circuit Court of Appeals was entered on November 1, 1944 (R. 751). The petition for a writ of certiorari was filed on December 29, 1944 and was granted on February

12, 1945 (R. 753). The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether a military provost court, established by the military commander under martial law proclaimed by the Governor of Hawaii and approved by the President under the Hawaiian Organic Act (48 U. S. C. 532), had lawful power to try the petitioner, a civilian, for embezzlement in violation of Section 5840, Revised Laws of Hawaii, 1935.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

These are printed in the Appendix of the Government's brief in *Duncan v. Kahonamoku*, No. 14, this Term, to be argued with this case.

STATEMENT

Establishment of Martial Law.—For a detailed statement of the establishment, modification and termination of martial law in the Territory of Hawaii, the Court is referred to the Government's brief in *Duncan v. Kahanamoku*, No. 14 this Term, to be argued herewith (Br. pp. 3-8). The principal facts pertinent to this case are that on December 7, 1941, the Governor of the Territory issued a public proclamation stating that pursuant to Section 67 of the Organic Act of Hawaii the privilege of the writ of habeas corpus was suspended until further notice, and the Territory

was placed under martial law (R. 74-75). In that Proclamation the Governor also requested the Commanding General, Hawaiian Department, during the emergency and until danger of invasion was removed, to exercise all the powers normally exercised by the Governor and by the judicial officers and employees of the Territory and such other and further powers as the emergency might require (R. 74-75). On the same day the Governor telegraphed the President that he had declared martial law and suspended the privilege of the writ, and on December 9 the President telegraphed his approval of this action of the Governor (R. 76).

Following the Governor's proclamation, on December 7, 1941, Lt. Gen. Walter C. Short, Commanding General, Hawaiian Department, issued a public proclamation declaring that in compliance with the aforesaid requests of the Governor he was assuming the position of Military Governor, that necessary ordinances governing the conduct of the people of the Territory would be published, and that offenders would be punished by military tribunals or held in custody until such time as the civil courts could function (R. 77-79). On December 7, 1941, General Short issued General Orders No. 4, establishing a system of military courts to try civilians for violations of laws of the United States and of the Territory, and of rules, regulations, orders or policies of the military au-

thorities, by the procedures prescribed for special and summary courts martial (R. 79-81).

On December 8, 1941, an order of the Chief Justice of the Supreme Court of the Territory, under the direction of the Commanding General, stated that all courts of the Territory would be closed until further notice (R. 81) and the civil courts were immediately replaced by provost courts (R. 119, 126-127).

General Orders No. 29, dated December 16, 1941, authorized the civil courts of the Territory to open to a limited extent for the trial of limited classes of cases not requiring jury trials or the subpoenaing of witnesses (R. 82-85). General Orders No. 57, dated January 27, 1942, authorized the civil courts, as agents of the Military Governor, to exercise their normal functions except for jury trials, writs of habeas corpus, and other specified classes of cases (R. 86-88).

The petitioner's offense.—On August 20, 1942, the petitioner, a citizen of the United States engaged in the brokerage and investment business in Honolulu and not connected with the armed forces, was arrested by representatives of the Provost Marshal of Honolulu and placed in the city jail (R. 60). On August 22 he was brought before the provost court and orally informed of the charge of embezzlement growing out of his conduct of his business in violation of Chapter 183 of the Revised Laws of Hawaii, 1935 (R. 60). A plea

entered by his attorney, objecting to the provost court's jurisdiction over the subject matter and the petitioner's person, was overruled and his demand for a jury trial was denied (R. 60-61). A motion for a continuance, supported by an affidavit of petitioner's attorney stating that he needed more time to study the facts of the case and that he had been visiting a doctor daily for ten days on account of an arm injury, was denied (R. 61). On August 25 petitioner was tried and convicted in the provost court for embezzlement in that he fraudulently converted and disposed of 500 shares of Aircraft Accessories stock, 100 shares of Vulte Aircraft stock, and 100 shares of White Motor stock of a total value of \$3,239.64. He was sentenced to a term of five years' imprisonment which was reduced to four years (R. 16, 61).

Habeas corpus proceeding.—On April 14, 1944, a petition for a writ of habeas corpus was filed in the United States District Court for the Territory of Hawaii alleging that petitioner was, and since August 25, 1942 had been, an inmate of Oahu Prison (R. 4-5); that his trial and conviction in the provost court violated his rights under the Fifth and Sixth Amendments of the United States Constitution (R. 7); that his trial was unfair (R. 7); that martial law ceased to exist legally in the Territory prior to his trial on August 25, 1942 (R. 8); that on that date the

courts of the Territory were able and ready to perform their normal functions, and no imminent danger of invasion existed to justify denying him a trial before the proper courts of the Territory (R. 8), and that no military necessity existed for his trial before a military tribunal (R. 9).

The answer to the petition, which was also the return to the writ (R. 100), alleges that on August 25, 1942, military necessity required petitioner's trial in the provost courts established by the military commander in good faith and in the honest belief that military necessity required their existence and operation (R. 31-32).

The petitioner's traverse alleges that martial law legally expired in the Territory on a date substantially prior to August 25, 1942, and that the privilege of the writ was fully restored as a matter of law prior to that date (R. 37-38); that the provost court had no right to try him for an indictable offense under the laws of the Territory for the crime of embezzlement involving moral turpitude (R. 40).

On the return of the writ the petitioner was produced and released on bail of \$500 over the Government's objection (R. 100). It was stipulated that exhibits and testimony in the similar case of *Duncan v. Kahanamoku* might be received in evidence without objection (R. 43-48) and they were so received at the hearing in the District Court on April 20, 1944 (R. 101).

The military situation.—The testimony of General Richardson and Admiral Nimitz was stipulated to the effect that General Richardson assumed command of the Territory on June 1, 1943 and Admiral Nimitz on December 18, 1941, and that their testimony in the *Duncan* case was equally applicable to the period of August 20–25, 1942 and to the offense involved herein (R. 56).

Governor Stainback's testimony was stipulated to the effect that the civil population in the Territory was orderly and in his opinion enemy invasion of the Territory was not imminent and the trial of civilians before military tribunals for offenses against the laws of the Territory was unnecessary during the period of August 20–25, 1942; that the need and justification for martial law expired within a period of three months after December 7, 1941; that a search of the records of his office after he became Governor on August 24, 1942, failed to reveal that the proclamations of December 7, 1941 by Governor Poindexter and General Short were submitted to, or approved by the President, and that he concluded that they had never been submitted to the President and the Secretary of the Interior for approval (R. 49–50). The testimony of Samuel B. Kemp, Chief Justice of the Supreme Court of the Territory since June 20, 1941, was stipulated to the effect that during the period of August 20–25, 1942, the courts of the Territory were ready, willing, and prepared to

perform their normal judicial functions; that after the month of April, 1942, he knew of no sound reason for denial of trial by jury to civilians charged with criminal offenses under the laws of the Territory and that the only reason assigned in his discussion with the military authorities regarding the reopening of the courts was that jury trials might require the attendance of persons engaged in war work and their occasional absences from employment (R. 53).

In addition to the testimony of Admiral Nimitz and General Richardson on the imminence of invasion, and General Richardson's opinion that military necessity required trial of petitioner's offense in a military tribunal, certain well-known historical facts pertinent to the period of August 20-25, 1942, may be mentioned briefly. At the time of petitioner's trial on August 25, 1942, the Japanese successful military offensive still continued. In addition to the occupation of Hong Kong, the Malay Peninsula, Singapore, the Dutch East Indies, and bases in New Guinea, the Japanese enemy had successfully occupied our own territories of Guam and Wake which, with Midway, constituted the important island chain connecting Hawaii with the Philippines. Then the Philippines were occupied. The enemy's occupation of the Solomon Islands, including Tulagi and Guadalcanal, gave him advance air and naval bases for offensive operations against our South

Pacific supply line and the north coast of Australia. General Marshall's Report (1943) p. 14.¹

Early in May, 1942 one Japanese attempt to extend enemy control southeastward along the borders of the Coral Sea with the ultimate objective of an attack on Australia, was repulsed in the Battle of the Coral Sea. The Japanese offensive, however, continued. In early June the Japanese attempt to occupy Midway Island preliminary to an invasion of Hawaii was thwarted in the Battle of Midway. (R. 344-346.) At the same time, however, Japanese forces occupied our territory of Attu, Agattu and Kiska in the Aleutian Islands. General Marshall's Report, *supra*, at p. 30.² Japanese advances in New Guinea continued during the summer of 1942 and by September, 1942 had forced Allied ground forces back to within 30 miles of Port Moresby, a gateway to Australia. General Marshall's Report, *supra*, at p. 14. On August 7 a landing was made on Guadalcanal by United States forces (R. 343, General Marshall's Report at p. 14). For a time it did not appear that the effort to wrest this crucial island from the Japanese could succeed. A strong Japanese attempt to recapture Guadalcanal was

¹ *Biennial Report of the Chief of Staff of the United States Army to the Secretary of War (1943)*, p. 14 (House Doc. 288, 78th Cong., 1st Sess.); McInnis, *The War, Third Year*, p. 238 (1942).

² These islands were not recovered until May, 1943. General Marshall's Report, p. 31.

beaten off as late as November 16, 1942 (R. 339). Not until early in 1943, was enemy resistance on Guadalcanal overcome. *General Marshall's Report*, p. 14. Even then our forces had only succeeded in checking the enemy's offensive and had not launched their own offensives or ousted the enemy from any American territory. The American offensive in the Central Pacific did not begin until a year later with the invasion of the Gilbert Islands in November, 1943, followed by invasion of the Marshall Islands in January, 1944, and the invasion of the Mariana Islands in July, 1944. General Marshall, *The Winning of the War in Europe and the Pacific* (1945).³ Our forces landed on Guam on July 21 and resistance ceased on August 10. By that time our forces in the Southwest Pacific under General MacArthur had reduced or by-passed the enemy's footholds in New Guinea and the way was prepared for the Battle of the Philippines which began with the landing on Leyte on October 20, 1944. *The Winning of the War in Europe and the Pacific, supra.*

The District Court held that assuming a valid state of martial law to have existed in Hawaii in August, 1942, the petitioner was deprived of his constitutional rights under the Fifth and Sixth Amendments because there was no military necessity for the trial of petitioner in a provost court

³ *Biennial Report of the Chief of Staff of the United States Army to the Secretary of War* (1945).

(R. 67). The court below held that the military authorities were authorized to try the petitioner for the offense involved and that therefore his imprisonment was lawful (R. 720).

SUMMARY OF ARGUMENT

On December 7, 1941 the Governor of the Territory of Hawaii, pursuant to the provision of Section 67 of the Organic Act of Hawaii authorizing martial law, placed the Territory under martial law and requested the military commander to exercise judicial and other functions of the civil government. At the time of petitioner's trial for embezzlement in the provost court, complete martial law prevailed and was not modified by the Governor until his Proclamation of February 8, 1943. The Constitution of the Republic of Hawaii, as construed by its Supreme Court, authorized complete martial law, including military trials of offenders against the criminal laws of the Republic, if the military authorities deemed such trials necessary. Such action was subject to judicial review only for an abuse of discretion. In Section 67 of the Organic Act Congress adopted this provision of the Constitution of the Republic of Hawaii and thereby authorized martial law in the Territory as it prevailed under the Republic.

The extension of the United States Constitution to Hawaii by the general provision of Sec-

tion 5 of the Organic Act did not limit or restrict martial law as authorized by Section 67. Even if the United States Constitution applies fully to the Territory of Hawaii, the exercise of martial law involved in the trial of petitioner was constitutional because it was not unreasonable for the military authorities to determine that military necessity required that such trials be conducted in military tribunals under the conditions prevailing in the strategic military and naval base of Hawaii in August, 1942. On such a question the courts will not substitute their judgment for that of the executive authorities charged with responsibility for the conduct of the war and the defense of the Hawaiian Islands.

ARGUMENT

The petitioner's principal contention is that his trial in the provost court was prohibited by the Constitution (Br. 13-22). The Government's argument that Congress, in expressly authorizing martial law, authorized trial of criminal offenses by military tribunals during a period of martial law and that the Constitution, as applied to Hawaii, does not invalidate this procedure, is presented in the Government's brief in the *Duncan* case, No. 14, this Term, to be argued herewith. There are presented here those considerations believed to be particularly pertinent to the time of petitioner's trial on August 25, 1942.

THE HAWAIIAN ORGANIC ACT CONSTITUTIONALLY AUTHORIZED THE TRIAL OF EMBEZZLEMENT OFFENSES IN PROVOST COURTS IN AUGUST, 1942

At the time of petitioner's trial in the provost court on August 25, 1942, the Governor had issued no proclamation modifying the proclamation of December 7, 1941 placing the Territory under martial law and expressly authorizing and requesting the military commander to exercise the powers of the Governor, judicial officers, and employees of the Territory during the emergency.* It has not been urged that the initial establishment of complete martial law was in bad faith or an abuse of discretion or not required by military necessity at the time of the attack on Pearl Harbor. It has been asserted, however, that the military situation had so greatly improved that any necessity for martial law in the trial of the petitioner's case ceased, and therefore the legal basis for such a trial ceased, within a few months after the attack on Pearl Harbor (R. 49, 53). The District Court concluded that after the Battle

* General Order No. 133, dated August 31, 1942, extended the jurisdiction of the civil courts to jury trials, and General Orders No. 135, dated September 4, 1942, enumerated the criminal offenses against the government or related to the war effort in respect of which the civil courts were not authorized to exercise jurisdiction (*Duncan Brief*, Appendix, pp. 86-93), and thereafter offenses such as petitioner's were tried in the civil courts.

of Midway in June, 1942, the danger of a land invasion of Hawaii was removed (R. 62). A consideration of the undisputed historical facts now available, however, makes it evident that the exercise of the criminal jurisdiction delegated by the Governor in proclaiming a state of martial law was not an abuse of discretion and therefore was within the scope of martial law expounded in *In re Kalaniana'ole*, 10 Hawaii 29, and authorized by Congress. Brief in No. 14, pp. 22-38. It is also submitted that the petitioner's trial in the provost court under a declared state of complete martial law was reasonably deemed to be required by military necessity and therefore was constitutional under the tests that would be applicable in the continental United States. Brief in No. 14, pp. 57-~~59~~⁷¹. It is true that his offense was not against military orders, like Duncan's; but considerations applicable to the time he committed it and was tried bring the proceedings and the resulting imprisonment under the martial law power.

Petitioner sought a writ of habeas corpus almost two years after he had entered prison pursuant to his conviction for embezzlement. The views expressed in the habeas corpus proceeding in April, 1944, to the effect that the imminent danger of invasion and the need for martial law in the interest of public safety had terminated three or four months after the Pearl Harbor attack are not only contrary to the Governor's

official action in continuing the Proclamation of December 7, 1941 in force and effect until March 10, 1943, but also are based on the fundamental error of appraisal of the military situation in August, 1942 in the light of the success of our armed forces thereafter and up to April, 1944. The reasonableness of the judgment expressed in the Governor's Proclamation of December 7, 1941 and in the military commander's Proclamation and General Orders, that martial law should continue and include trial of petitioner's offense on August 24, 1942, must be judged not by the subsequent successes of our arms, but in the light of the situation when the Governor issued the Proclamation of December 7, 1941 and when the petitioner was tried on August 25, 1942. *Korematsu v. United States*, 323 U. S. 214, 224; *Hirabayashi v. United States*, 320 U. S. 81, 93-94; *Moyer v. Peabody*, 212 U. S. 78, 85; *Mitchell v. Harmony*, 13 How. 115, 134.

It is true that in the Battle of Midway one Japanese offensive attack to occupy the Hawaiian Islands was beaten off, but the Japanese attack launched at the same time succeeded in occupying Kiska and Attu in the Aleutian Islands. The defeat at Midway did not stop the general Japanese offensive or even eliminate the possibility of another offensive toward Midway and Hawaii. At the time petitioner was tried in the provost court, August 25, 1942, the successful Japanese offensive

in New Guinea was continuing. The force of Marines which had been landed on Guadalcanal on August 7, 1942, to block the Japanese offensive southward which threatened our supply line to Australia, was struggling to hold its beachhead against superior enemy forces. It is impossible to say even today what effect the loss of Guadalcanal would have had on prolonging the war in the Pacific. In August, 1942, from the viewpoint of the military authorities responsible for the security of the Hawaiian Islands and Midway, the only United States territory in the Pacific not already occupied by the Japanese, the battle then raging on Guadalcanal was of the gravest importance. The initiation of offensive and defensive plans in the Central Pacific depended on its outcome and that outcome was not clear until months after the petitioner's trial on August 25, 1942. It would appear that on that date the military authorities were justified in maintaining martial law without relaxation, because of the dangers still threatening.

The governmental control of the Territory in time of war with Japan was complicated by the fact that 37.3%, or 157,905 persons (R. 520) of the entire population of 423,330, were persons of Japanese ancestry, and a substantial portion of them were Japanese nationals. Criminal jury trials, even for security offenses, could not have been conducted without citizens of Japanese an-

cestry. It is true that the Japanese and Japanese-American population in the Islands as a whole has an excellent record of loyalty; but throughout the war, and particularly at a time when the extent and success of Japanese offensive military efforts were still an unknown military quantity and the United States had not succeeded in launching offensive operations, certainly the responsible authorities were justified in taking all possible precautions, including the maintenance of complete martial law, while conducting military operations in such a strategic area as Hawaii, under the conditions there prevailing. *Korematsu v. United States, supra; Hirabayashi v. United States, supra.* The court below correctly stated that "the mere assembly of juries and the carrying on of protracted criminal trials might well constitute an invitation to disorder as well as an interference with the vital business of the moment. And the summary punishment of criminal offenders of every sort might conceivably serve to discourage the commission of offenses immediately endangering the general security" (R. 716).

It is submitted that in all the circumstances it cannot be said that the trial of petitioner by a provost court was either an abuse of the exercise of the complete martial law authorized by Section 67 (Point I, *Duncan* brief) or, if the Constitution applies, that there was no reasonable basis

for the view of the military authorities that military necessity required such trials in provost courts in August, 1942 (Point II, *Duncan* brief).

II

THE PETITIONER'S TRIAL IN THE PROVOST COURT WAS NOT UNFAIR

Petitioner contends (Br. 28-34) that his trial was basically unfair in that he was not supplied with a written copy of the charge of embezzlement on which he was tried, and also in that he was tried five days after his arrest and three days after his arraignment, and a motion for a continuance was denied. The District Court did not pass on these contentions. The court below ruled that there was nothing in the showing made in the case which would warrant release on habeas corpus on the ground of an unfair trial and pointed out that the District Court did not make any finding of unfairness in the conduct of the trial (R. 727).

The petition for a writ of habeas corpus alleges that petitioner was brought before the provost court in the courtroom of the district magistrate of Honolulu and informed that he was to be tried before the provost court on a charge of embezzlement growing out of the conduct of his brokerage and investment business and in violation of Chapter 1831, Revised Laws of Hawaii, 1935, and that

he was never furnished a copy of the charge or accusation against him (R. 5-6). The petition does not allege that petitioner requested a copy of the charge. There are annexed to the petition a copy of the written plea to the jurisdiction of the provost court, a copy of the written demand for a jury trial, and a copy of the motion for a continuance supported by an affidavit of petitioner and an affidavit of his attorney, all of which were captioned in the provost court and were filed therein by petitioner's attorney prior to the provost court trial (R. 10-15). In none of these documents, including the affidavit of petitioner's attorney which discloses a knowledge of the nature of the charge, is any request made for a copy of the charge.¹ The answer to the petition admits the allegation of the petition that petitioner was not served with a copy of the charge and alleges that at the time of his arrest he was advised of the nature and cause of the accusation against him and at the time of his arraignment in the provost court he was orally advised of the nature and cause of the accusation in lieu of furnishing him with a copy of the charge of accusation (R. 25). Petitioner's traverse does not deny or otherwise

¹The charge is set forth in the order of the provost court to the provost marshal and to the warden of Oahu Prison for the imprisonment of petitioner and this order is annexed as an exhibit to the petition (R. 15-17).

plead to these allegations of the answer to the petition (R. 37-41). Petitioner did not offer any evidence on the question of the notification to him of the charge against him.

No statute or military order applicable to the provost court required that petitioner be given a copy of the charge. In view of this fact and the fact that it appears that petitioner and his attorney were actually apprised of the nature of the charge and did not request a copy of the charge, it is submitted that in this respect it cannot be said that the trial was unfair.

The petitioner also contends that the denial of a continuance rendered the provost court trial unfair (Br. 30). The allegations of paragraph X of the petition for a writ of habeas corpus, which state that the trial was unfair and that petitioner was given only a semblance of a trial (R. 7), were denied in paragraph 10 of the answer to the petition (R. 26). The petitioner offered no evidence on this question and the record does not establish that the petitioner was prejudiced by the denial of a continuance. Under the procedure established for the provost courts (R. 187) the conviction and sentence were reviewed and the sentence reduced from five to four years (R. 482). In view of the record it is submitted that the court below correctly held that no showing of unfairness of the provost court trial was established (R. 727, 749).

CONCLUSION

The judgment of the court below should be affirmed.

Respectfully submitted.

✓ J. HOWARD MCGRATH,
Solicitor General.

✓ EDWARD J. ENNIS,
Special Assistant to the Attorney General.

✓ RALPH F. FUCHS.

THOMAS H. GREEN,
*Major General, The Judge Advocate
General, U. S. Army.*

✓ WILLIAM J. HUGHES, Jr.,
*Colonel, Judge Advocate General's
Department, U. S. Army.*

✓ EUGENE V. SLATTERY,
*Colonel, Judge Advocate General's
Department, U. S. Army.*

ANGUS TAYLOR,
Major, Coast Artillery, U. S. Army.

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